

11-24-2014

Idaho v. Lovely Clerk's Record Dckt. 42790

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Idaho v. Lovely Clerk's Record Dckt. 42790" (2014). *Idaho Supreme Court Records & Briefs*. 5508.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5508

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

LORI ELIZABETH LOVELY,

Defendant-Appellant.

Supreme Court Case No. 42790

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE STEVEN HIPPLER

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

State of Idaho vs. Lori Elizabeth Lovely

Date	Code	User		Judge
4/2/2014	NCRF	PRSCHOKF	New Case Filed - Felony	Magistrate Court Clerk
	PROS	PRSCHOKF	Prosecutor assigned Ada County Prosecutor	Magistrate Court Clerk
	CRCO	TCMCCOSL	Criminal Complaint	Magistrate Court Clerk
	HRSC	TCMCCOSL	Hearing Scheduled (Video Arraignment 04/02/2014 01:30 PM)	Daniel L Steckel
	ARRN	TCJOHNCS	Hearing result for Video Arraignment scheduled on 04/02/2014 01:30 PM: Arraignment / First Appearance	Daniel L Steckel
	CHGA	TCJOHNCS	Judge Change: Administrative	Cawthon / Irby
	ORPD	TCJOHNCS	Order Appointing Public Defender Ada County Public Defender [on the record in open court]	Cawthon / Irby
	HRSC	TCJOHNCS	Hearing Scheduled (Preliminary 04/16/2014 08:30 AM)	Cawthon / Irby
	BSET	TCJOHNCS	BOND SET: at 350000.00 - (I37-2732B(a)(1) Drug-Trafficking in Marijuana)	Cawthon / Irby
	ORPD	MADEFRJM	Order Appointing Public Defender [file stamped 4/3/14]	Cawthon / Irby
4/3/2014	MFBR	TCOLSOMC	Motion For Bond Reduction	Cawthon / Irby
	NOHG	TCOLSOMC	Notice Of Hearing	Cawthon / Irby
	RQDD	TCOLSOMC	Defendant's Request for Discovery	Cawthon / Irby
4/15/2014	PHRD	TCLANGAJ	Preliminary Hearing Response to Request for Discovery and Objections/First Supplemental	Cawthon / Irby
	PHRD	TCLANGAJ	Preliminary Hearing Response to Request for Discovery and Objections	Cawthon / Irby
	RQDS	TCLANGAJ	State/City Request for Discovery	Cawthon / Irby
4/16/2014	HRHD	CCMANLHR	Hearing result for Preliminary scheduled on 04/16/2014 08:30 AM: Hearing Held	James Cawthon
	BOUN	CCMANLHR	Hearing result for Preliminary scheduled on 04/16/2014 08:30 AM: Bound Over (after Prelim)	James Cawthon
	CHGB	CCMANLHR	Change Assigned Judge: Bind Over	James Cawthon
	HRSC	CCMANLHR	Hearing Scheduled (Arraignment 04/22/2014 09:00 AM)	James Cawthon
	AMCO	CCMANLHR	Amended Complaint Filed	James Cawthon
	COMT	CCMANLHR	Commitment	James Cawthon
	MMNH	CCMANLHR	Magistrate Minutes & Notice of Hearing	James Cawthon
4/17/2014	MFBR	TCLANGAJ	Motion For Bond Reduction	Steven Hippler
	NOHG	TCLANGAJ	Notice Of Hearing (4/22/14)	Steven Hippler
	MFTR	TCLANGAJ	Motion for Preliminary Hearing Transcript	Steven Hippler
4/18/2014	INFO	TCCHRIKE	Information	Steven Hippler
4/21/2014	ORDR	CCAMESLC	Order for Preliminary Hearing Transcript	Steven Hippler

State of Idaho vs. Lori Elizabeth Lovely

Date	Code	User	Judge
4/22/2014	DCAR	CCAMESLC	Hearing result for Arraignment scheduled on 04/22/2014 09:00 AM: District Court Arraignment- Court Reporter: Vilsach Number of Pages: 25
	HRSC	CCAMESLC	Hearing Scheduled (Entry of Plea 05/13/2014 09:00 AM)
5/13/2014	DCHH	CCAMESLC	Hearing result for Entry of Plea scheduled on 05/13/2014 09:00 AM: District Court Hearing Held Court Reporter: Valsich Number of Transcript Pages for this hearing estimated: 50
	HRSC	CCAMESLC	Hearing Scheduled (Jury Trial 09/15/2014 09:00 AM)
	HRSC	CCAMESLC	Hearing Scheduled (Pretrial Conference 09/02/2014 03:00 PM)
	HRSC	CCAMESLC	Hearing Scheduled (Status 08/26/2014 03:00 PM)
	PLEA	CCAMESLC	A Plea is entered for charge: - NG (137-2732B(a)(1) Drug-Trafficking in Marijuana)
	ORDR	CCJOHNLE	Order Governing Further Criminal Proceedings and Notice of the Trial Setting
7/2/2014	RSDS	TCLANGAJ	State/City Response to Discovery
7/29/2014	MOTE	TCCHRIKE	Motion to Enlarge Time
7/30/2014	NOHG	TCCHRIKE	Notice Of Hearing(08/05/14@4PM)
	HRSC	TCCHRIKE	Hearing Scheduled (Hearing Scheduled 08/05/2014 04:00 PM)
	NOTC	TCWRIGSA	Notice of Preparation of Preliminary Hearing Transcript
8/5/2014	DCHH	CCCHILER	Hearing result for Hearing Scheduled scheduled on 08/05/2014 04:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 100
	HRSC	CCCHILER	Hearing Scheduled (Motion to Suppress 08/25/2014 03:00 PM)
8/6/2014	TRAN	TCOLSOMC	Transcript Filed
8/15/2014	MOTS	TCLANGAJ	Motion to Suppress
	BREF	TCLANGAJ	Brief in Support of Motion To Suppress
8/22/2014	OBJE	TCCHRIKE	State's Objection and Memorandum in Response to Defendatn's Motion to Suppress
	RSDS	TCCHRIKE	State/City Response to Discovery / Addendum

State of Idaho vs. Lori Elizabeth Lovely

Date	Code	User	Judge
8/25/2014	DCHH	CCCHILER	Hearing result for Motion to Suppress scheduled on 08/25/2014 03:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 200
8/26/2014	DCHH	CCCHILER	Hearing result for Status scheduled on 08/26/2014 03:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 100
9/2/2014	DCHH	CCCHILER	Hearing result for Pretrial Conference scheduled on 09/02/2014 03:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 100
9/5/2014	HRSC	CCCHILER	Hearing Scheduled (Jury Trial 09/17/2014 09:00 AM)
	HRSC	CCCHILER	Hearing Scheduled (Jury Trial 09/18/2014 09:00 AM)
	HRSC	CCCHILER	Hearing Scheduled (Jury Trial 09/19/2014 09:00 AM)
	HRVC	CCCHILER	Hearing result for Jury Trial scheduled on 09/15/2014 09:00 AM: Hearing Vacated
9/11/2014	RSDS	TCCHRIKE	State/City Response to Discovery / Second Addendum
	MISC	CCCHILER	State's Witness List
	MISC	CCCHILER	State's Exhibit List
9/17/2014	MISC	CCCHILER	Acknowledgment of Offer of Settlement
	DCHH	CCCHILER	Hearing result for Jury Trial scheduled on 09/17/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 200
9/18/2014	DCHH	CCCHILER	Hearing result for Jury Trial scheduled on 09/18/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 100
	HRVC	CCCHILER	Hearing result for Jury Trial scheduled on 09/19/2014 09:00 AM: Hearing Vacated
	HRSC	CCCHILER	Hearing Scheduled (Sentencing 11/18/2014 02:00 PM)
	JUIN	CCCHILER	Jury Instructions Filed
	VERD	CCCHILER	Verdict Form
	PSIO1	CCCHILER	Pre-Sentence Investigation Evaluation Ordered

State of Idaho vs. Lori Elizabeth Lovely

Date	Code	User	Judge
10/20/2014	BAAT	PDVANVKE	ATTORNEY REASSIGNED BY BATCH PROCESSING (batch process) Kimberly J Simmons, 6909 removed. Nicole Owens, 7679 assigned.
11/18/2014	DCHH	CCCHILER	Hearing result for Sentencing scheduled on 11/18/2014 02:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 100
	FIGT	CCCHILER	Finding of Guilty (I37-2732B(a)(1) Drug-Trafficking in Marijuana)
	JAIL	CCCHILER	Sentenced to Jail or Detention (I37-2732B(a)(1) Drug-Trafficking in Marijuana) Confinement terms: Penitentiary determinate: 6 years. Penitentiary indeterminate: 9 years.
	CONC	CCCHILER	Concurrent Sentencing (I37-2732B(a)(1) Drug-Trafficking in Marijuana) Consecutive Sentence: Concurrent with: count 2
	SNPF	CCCHILER	Sentenced To Pay Fine 15280.50 charge: I37-2732B(a)(1) Drug-Trafficking in Marijuana
	FIGT	CCCHILER	Finding of Guilty (I37-2732(c)(1) {F} Controlled Substance-Possession of)
	JAIL	CCCHILER	Sentenced to Jail or Detention (I37-2732(c)(1) {F} Controlled Substance-Possession of) Confinement terms: Penitentiary determinate: 2 years. Penitentiary indeterminate: 5 years.
	CONC	CCCHILER	Concurrent Sentencing (I37-2732(c)(1) {F} Controlled Substance-Possession of) Consecutive Sentence: Concurrent with: count 1
	STAT	CCCHILER	STATUS CHANGED: closed pending clerk action
11/20/2014	RESR	PRMEZAEJ	Restitution Recommended by the Prosecutor's office. 863.45 victim # 1
	RESR	PRMEZAEJ	Restitution Recommended by the Prosecutor's office. 2700.00 victim # 2
	RESR	PRMEZAEJ	Restitution Recommended by the Prosecutor's office. 3514.00 victim # 3
11/24/2014	JCOC	DCHOUSKN	Judgment Of Conviction & Commitment
	ORDR	DCHOUSKN	Order of Restitution and Judgment
	NOTA	TCLANGAJ	NOTICE OF APPEAL
	APSC	TCLANGAJ	Appealed To The Supreme Court
12/1/2014	ORDR	CCCHILER	Order Appointing SAPD
4/6/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 42790

APR 02 2014

CHRISTOPHER D. RICH, Clerk
By STORMY McCORMACK
DEPUTY

DR # 14-406577

GREG H. BOWER
Ada County Prosecuting Attorney

Kari L Higbee
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
vs.)	
	)	COMPLAINT
LORI ELIZABETH LOVELY,)	
	)	Lovely's [REDACTED]
Defendant.	)	[REDACTED]
_____)	

PERSONALLY APPEARED Before me this 2nd day of April 2014, Kari L Higbee, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did commit the crimes of: I. TRAFFICKING IN MARIJUANA, FELONY, I.C. §37-2732B(a)(1) and II. POSSESSION OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(c) as follows:

COUNT I

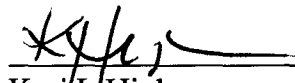
That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did knowingly possess and/or bring into this state twenty-five (25) pounds or more of Marijuana, a Schedule I non-narcotic controlled substance.

COUNT II

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine and/or Amphetamine, a Schedule II controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

GREG H. BOWER
Ada County Prosecutor



Kari L. Higbee
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this ____ day of April 2014.



Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

CASE NO. CR. FE-2014-4550

VS

CLERK Exposed

Kori Lovely

DATE 4/2/14 TIME 11:16

PROSECUTOR K. Higbee

CASE ID _____ BEG. 111608

COMPLAINING WITNESS _____

COURTROOM 204 END 111754

INTOX _____

JUDGE

STATUS

- ☐ BEREZ
- ☐ BIETER
- ☐ CAWTHON
- ☐ COMSTOCK
- ☐ ELLIS
- ☐ FORTIER
- ☒ GARDUNIA
- ☐ HARRIGFELD
- ☐ HAWLEY
- ☐ HICKS
- ☐ KIBODEAUX
- ☐ _____
- ☐ _____

- ☐ MacGREGOR-IRBY
- ☐ MANWEILER
- ☐ McDANIEL
- ☐ MINDER
- ☐ OTHS
- ☐ REARDON
- ☐ SCHMIDT
- ☐ STECKEL
- ☐ SWAIN
- ☐ WATKINS

- ☒ STATE SWORN
- ☐ PC FOUND _____
- ☐ COMPLAINT SIGNED
- ☐ AMENDED COMPLAINT SIGNED
- ☐ AFFIDAVIT SIGNED
- ☐ JUDICIAL NOTICE TAKEN
- ☐ NO PC FOUND _____
- ☐ EXONERATE BOND _____
- ☐ SUMMONS TO BE ISSUED
- ☐ WARRANT ISSUED
- ☐ BOND SET \$ _____
- ☐ NO CONTACT

DR# _____

- ☐ DISMISS CASE
- ☒ IN CUSTODY

COMMENTS

- ☐ AGENTS WARRANT _____
- ☐ RULE 5(B) _____
- ☐ FUGITIVE _____
- ☐ MOTION & ORDER TO CONSOLIDATE _____
- _____
- _____
- _____

ADA COUNTY MAGISTRATE MINUTES

Lori Elizabeth Lovely CR-FE-2014-0004550

Scheduled Event: Video Arraignment Wednesday, April 02, 2014 01:30 PM

Judge: Daniel L Steckel Clerk: Interpreter:

Prosecuting Agency: AC BC EA GC MC Pros: Navale

PD / Attorney: Estes

- 1 I37-2732B(a)(1) Drug-Trafficking in Marijuana F
- 2 I37-2732(c)(1) F Controlled Substance-Possession of F

15825 Case Called Defendant: Present Not Present In Custody

Advised of Rights Waived Rights PD Appointed Waived Attorney

Guilty Plea / PV Admit N/G Plea Advise Subsequent Penalty

Bond \$ 350,000 ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

Prem: 4/16/14 @ 8:30am w/ Cauffman/rby

Finish () Release Defendant

APR 03 2014

CHRISTOPHER D. RICH, Clerk
By STEPHANIE HARDY
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

STATE OF IDAHO,
Plaintiff.

vs.

Lori Elizabeth Lovely
17776 Red Bud Lane
Shasta Lake, CA 96019
Defendant.

Case No: CR-FE-2014-0004550

NOTICE OF APPOINTMENT OF PUBLIC DEFENDER
AND SETTING CASE FOR HEARING

☒ Ada ☐ Boise ☐ Eagle ☐ Garden City ☐ Meridian

TO: Ada County Public Defender

YOU ARE HEREBY NOTIFIED that you are appointed to represent the defendant in this cause, or in the District Court until relieved by court order. The case is continued for:

Preliminary Wednesday, April 16, 2014 08:30 AM
Judge: Cawthon / Irby

BOND AMOUNT: _____ The Defendant is: ☐ In Custody ☐ Released on Bail ☐ ROR

TO: The above named defendant

IT HAS BEEN ORDERED BY THIS COURT that the defendant is to contact the Ada County Public Defender's Office at 200 W. Front Street, Room 1107, Boise, Idaho 83702. Telephone: (208) 287-7400. If the defendant is unable to post bond and obtain his/her release from jail, that the proper authorities allow the defendant to make a phone call to the Ada County Public Defender.

IT HAS BEEN FURTHER ORDERED: That the parties, prior to the pre-trial conference, complete and comply with Rule 16 I.C.R. and **THAT THE DEFENDANT BE PERSONALLY PRESENT AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL: FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.**

I hereby certify that copies of this Notice were served as follows on this date Wednesday, April 02, 2014.

Defendant: Mailed _____ Hand Delivered 1 Signature _____
Clerk / date _____ Phone () _____

Prosecutor: Interdepartmental Mail X

Public Defender: Interdepartmental Mail X

Stephanie Hardy
Deputy Clerk

400
PH
4/16
8:30

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
A.M. _____ FILED P.M. 350

APR 03 2014

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff

vs.

LORI ELIZABETH LOVELY,


Defendant.

Case No. CR-FE-2014-0004550

MOTION FOR BOND REDUCTION

COMES NOW, LORI ELIZABETH LOVELY, the above-named defendant, by and through counsel ANITA M.E. MOORE, Ada County Public Defender's office, and moves this Court for its ORDER reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied their right to bail.

DATED, Thursday, April 03, 2014.


ANITA M.E. MOORE
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, April 03, 2014, I mailed a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.

MD
MOTION FOR BOND REDUCTION


000011

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
A.M. _____ P.M. _____
FILED 350

APR 03 2014
CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

NOTICE OF HEARING

TO: THE STATE OF IDAHO, Plaintiff, and to ADA COUNTY PROSECUTOR:

YOU, AND EACH OF YOU, are hereby notified that the defendant will call for a hearing on MOTION FOR BOND REDUCTION, now on file in the above-entitled matter, on Wednesday, April 16, 2014, at the hour of 08:30 AM, in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED, Thursday, April 03, 2014.



ANITA M.E. MOORE
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, April 03, 2014, I mailed a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.

MD
NOTICE OF HEARING



000012

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____ FILED _____ 3 50
A.M. _____ P.M. _____

APR 03 2014

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

REQUEST FOR DISCOVERY

TO: THE STATE OF IDAHO, Plaintiff, and to ADA COUNTY PROSECUTOR:


PLEASE TAKE NOTICE, that the undersigned, pursuant to ICR 16, requests discovery and photocopies of the following information, evidence, and materials:

- 1) All **unredacted** material or information within the prosecutor's possession or control, or which thereafter comes into his possession or control, which tends to negate the guilt of the accused or tends to reduce the punishment thereof. ICR 16(a).
- 2) Any **unredacted**, relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.
- 3) Any **unredacted**, written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.
- 4) Any prior criminal record of the defendant and co-defendant, if any.
- 5) All **unredacted** documents and tangible objects as defined by ICR 16(b)(4) in the possession or control of the prosecutor, which are material to the defense, intended for use by the prosecutor or obtained from or belonging to the defendant or co-defendant.

- 6) All reports of physical or mental examinations and of scientific tests or experiments within the possession, control, or knowledge of the prosecutor, the existence of which is known or is available to the prosecutor by the exercise of due diligence.
- 7) A written list of the names, addresses, records of prior felony convictions, and written or recorded statements of all persons having knowledge of facts of the case known to the prosecutor and his agents or any official involved in the investigatory process of the case.
- 8) A written summary or report of any testimony that the state intends to introduce pursuant to rules 702, 703, or 705 of the Idaho Rules of Evidence at trial or hearing; including the witness' opinions, the facts and data for those opinions, and the witness' qualifications.
- 9) All reports or memoranda made by police officers or investigators in connection with the investigation or prosecution of the case, including what are commonly referred to as "ticket notes."
- 10) Any writing or object that may be used to refresh the memory of all persons who may be called as witnesses, pursuant to IRE 612.
- 11) Any and all audio and/or video recordings made by law enforcement officials during the course of their investigation.
- 12) Any evidence, documents, or witnesses that the state discovers or could discover with due diligence after complying with this request.

The undersigned further requests written compliance within 14 days of service of the within instrument.

DATED, Thursday, April 03, 2014.




ANITA M.E. MOORE
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, April 03, 2014, I mailed a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



000015

file policy to review those documents in the control and possession of the prosecution that may be exculpatory in some manner to the offense charged.

16-B Stipulation - Request Disclosure:

1. Statement of Defendant: The State has complied with discovery by providing the known statements of the Defendant that are contained in documents and items the State currently has in its possession and will comply with discovery as more information becomes available, as follows:

- a. Audio Taped Confession/Statement, if any exists
- b. Video Taped Confession/Statement, if any exists
- c. Written Confession/Statement, if any exists
- d. As reflected in Police Reports
- e. As reflected in booking sheets

Be advised: As you are aware, the Ada County Jail video records inmate video conversations your client has with individuals other than your client's lawyer while incarcerated at the Ada County Jail. The visual or the images of the recorded calls are kept for only 30 days of the date of the conversation, although the audio portion of the video recordings are maintained indefinitely. Please contact the handling prosecuting attorney to make an appointment to view those video calls should you desire to do so before they drop off the system.

2. Statement of Co-Defendant: See disclosed police reports for statements of Co-Defendant, if any exists.

3. Defendant's Prior Record: The Defendant's prior record disclosed in the following:

- a. NCIC report

4A. Documents and Tangible Objects: Police Reports, Witness Statements, Medical records and/or other tangible documents in possession of the Ada County Prosecutor's Office as of the date of filing of this document disclosed as State's pages 67 through 81. Pursuant to I.C.R. 16(d), the State has provided an unredacted discovery packet for defense counsel and a redacted packet of discovery for the defendant. The unredacted packet of discovery is not to be disclosed to the defendant or to the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need.

i. Audio/video recordings: The State will provide audio and/or video recordings when they are received, if any exists, in this case. The State will provide unredacted audio and/or video to defense counsel marked "Confidential," which are not to be shared with the defendant or

the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need. At the preliminary hearing level, upon request, the State will provide redacted audio/video to defense counsel so that redacted audio/video may be shared with the defendant.

Be advised: As you are aware, the Ada County Jail video records inmate video conversations your client has with individuals other than your client's lawyer while incarcerated at the Ada County Jail. The visual or the images of the recorded calls are kept for only 30 days of the date of the conversation, although the audio portion of the video recordings are maintained indefinitely. Please contact the handling prosecuting attorney to make an appointment to view those video calls should you desire to do so before they drop off the system.

B. Photographs: The State will comply with such request as it receives photographs, maps, charts or diagrams, if any exist, in this case.

5. Reports of Examinations and Tests:

☒ The State will comply with such request as it receives reports of examinations and tests, if any exist, in this case.

☒ These documents are specifically identified in subsection 4A above in State's pages 67 through 81.

6. Witnesses: A list of names identifying witnesses and protected contact information has been provided to defense counsel in a letter under separate cover, which is not to be disclosed to the defendant or to the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need. The State has provided to defense counsel a separate redacted witness list excluding protected information that can be shared with the defendant.

7. Expert Witnesses: The State will comply with such request as it identifies expert witnesses, if any exist, in this case.

☒ The State will comply with such request as it receives reports of examinations and tests, if any exist, in this case.

☒ These witnesses have been identified in a letter to defense counsel as described above in subparagraph 6 above.

8. Police Reports: The State possesses police reports, witness statements and other documents which are available upon request. These documents are specifically identified in subparagraph 4(A) above.

II. OBJECTIONS

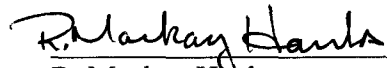
A. The State has excluded the identity of the Confidential Informant from this Discovery Response. The grounds for this objection is/are as follows. Pursuant to I.C.R. 16(g)(2) and I.R.E. 509, the identity of a Confidential Informant is excluded unless said Informant is to be produced as a witness at a hearing or trial, subject to any protective order under I.C.R. 16(l) or a disclosure order under Rule 16(b)(9).

B. The State objects to any items in the defendant's request for discovery that would be in violation of state or federal law as follows and requests that if this Court rules that disclosure is required, that this Court also issue a protective order pursuant to I.C.R. 16(l):

- ☒ NCIC criminal history for all witnesses. The State is not permitted to use NCIC for this purpose pursuant to federal law and hereby objects to providing this material.
- ☒ A police officer(s)' internal affairs files and/or other personnel documents. Personnel documents are confidential matters pursuant to State law. The State hereby objects to providing this material.
- ☐ Other

RESPECTFULLY SUBMITTED this 15 day of April 2014.

GREG H. BOWER
Ada County Prosecuting Attorney

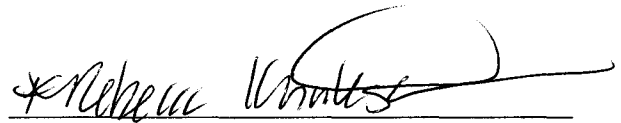

R. Mackay Hanks
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 15 day of April 2014, I caused to be served, a true and correct copy of the foregoing Preliminary Hearing Response to Request for Discovery and Objections upon the individual(s) named below in the manner noted:

Anita Moore, 200 W Front Street, Room #1107 Boise, ID

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By hand delivering copies of the same to defense counsel.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____



APR 15 2014

CHRISTOPHER D. RICH, Clerk
By SARA WRIGHT
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

R. Mackay Hanks
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
	)	Case No. CR-FE-2014-0004550
Plaintiff,)	
vs.	)	PRELIMINARY HEARING
	)	RESPONSE TO REQUEST FOR
LORI ELIZABETH LOVELY,	)	DISCOVERY AND OBJECTIONS
)	
Defendant.)	
_____)	

COMES NOW, R. Mackay Hanks, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and submits the following Preliminary Hearing Response to the Request for Discovery and Objections and informs the Court that the State has complied with the Defendant's Request for Discovery as outlined below.

I. DISCLOSURES

16-A Brady-Agurs Disclosure: The prosecution is unaware of any evidence that is exculpatory on its face relating to the offense charged.

With regard to evidence that may be exculpatory as used or interpreted, the prosecution requests that the defense counsel submit, in writing, the defense to be asserted in this case so the prosecution can review its file to determine if any facts, evidence or witnesses may be material to the preparation of that defense. In the alternative, the prosecution offers to defense counsel an open

file policy to review those documents in the control and possession of the prosecution that may be exculpatory in some manner to the offense charged.

16-B Stipulation - Request Disclosure:

1. Statement of Defendant: The State has complied with discovery by providing the known statements of the Defendant that are contained in documents and items the State currently has in its possession and will comply with discovery as more information becomes available, as follows:

- a. Audio Taped Confession/Statement, if any exists
- b. Video Taped Confession/Statement, if any exists
- c. Written Confession/Statement, if any exists
- d. As reflected in Police Reports
- e. As reflected in booking sheets

Be advised: As you are aware, the Ada County Jail video records inmate video conversations your client has with individuals other than your client's lawyer while incarcerated at the Ada County Jail. The visual or the images of the recorded calls are kept for only 30 days of the date of the conversation, although the audio portion of the video recordings are maintained indefinitely. Please contact the handling prosecuting attorney to make an appointment to view those video calls should you desire to do so before they drop off the system.

2. Statement of Co-Defendant: See disclosed police reports for statements of Co-Defendant, if any exists.

3. Defendant's Prior Record: The Defendant's prior record disclosed in the following:

- a. NCIC report

4A. Documents and Tangible Objects: Police Reports, Witness Statements, Medical records and/or other tangible documents in possession of the Ada County Prosecutor's Office as of the date of filing of this document disclosed as State's pages 1 through 66. Pursuant to I.C.R. 16(d), the State has provided an unredacted discovery packet for defense counsel and a redacted packet of discovery for the defendant. The unredacted packet of discovery is not to be disclosed to the defendant or to the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need.

i. Audio/video recordings: The State will provide audio and/or video recordings when they are received, if any exists, in this case. The State will provide unredacted audio and/or video to defense counsel marked "Confidential," which are not to be shared with the defendant or

the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need. At the preliminary hearing level, upon request, the State will provide redacted audio/video to defense counsel so that redacted audio/video may be shared with the defendant.

Be advised: As you are aware, the Ada County Jail video records inmate video conversations your client has with individuals other than your client's lawyer while incarcerated at the Ada County Jail. The visual or the images of the recorded calls are kept for only 30 days of the date of the conversation, although the audio portion of the video recordings are maintained indefinitely. Please contact the handling prosecuting attorney to make an appointment to view those video calls should you desire to do so before they drop off the system.

B. Photographs: The State will comply with such request as it receives photographs, maps, charts or diagrams, if any exist, in this case.

5. Reports of Examinations and Tests:

- ☒ The State will comply with such request as it receives reports of examinations and tests, if any exist, in this case.
- ☒ These documents are specifically identified in subsection 4A above.

6. Witnesses: A list of names identifying witnesses and protected contact information has been provided to defense counsel in a letter under separate cover, which is not to be disclosed to the defendant or to the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need. The State has provided to defense counsel a separate redacted witness list excluding protected information that can be shared with the defendant.

7. Expert Witnesses: The State will comply with such request as it identifies expert witnesses, if any exist, in this case.

- ☒ The State will comply with such request as it receives reports of examinations and tests, if any exist, in this case.
- ☒ These witnesses have been identified in a letter to defense counsel as described above in subparagraph 6 above.

8. Police Reports: The State possesses police reports, witness statements and other documents which are available upon request. These documents are specifically identified in subparagraph 4(A) above.

II. OBJECTIONS

A. The State has excluded the identity of the Confidential Informant from this Discovery Response. The grounds for this objection is/are as follows. Pursuant to I.C.R. 16(g)(2) and I.R.E. 509, the identity of a Confidential Informant is excluded unless said Informant is to be produced as a witness at a hearing or trial, subject to any protective order under I.C.R. 16(l) or a disclosure order under Rule 16(b)(9).

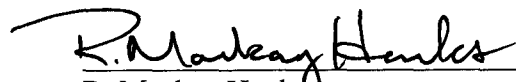
B. The State objects to any items in the defendant's request for discovery that would be in violation of state or federal law as follows and requests that if this Court rules that disclosure is required, that this Court also issue a protective order pursuant to I.C.R. 16(l):

- ☒ NCIC criminal history for all witnesses. The State is not permitted to use NCIC for this purpose pursuant to federal law and hereby objects to providing this material.
- ☒ A police officer(s)' internal affairs files and/or other personnel documents. Personnel documents are confidential matters pursuant to State law. The State hereby objects to providing this material.
- ☐ Other

RESPECTFULLY SUBMITTED this 15 day of April 2014.

GREG H. BOWER

Ada County Prosecuting Attorney

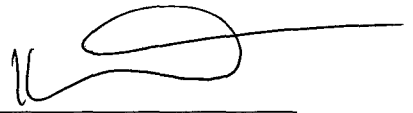

R. Mackay Hanks
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of April 2014, I caused to be served, a true and correct copy of the foregoing Preliminary Hearing Response to Request for Discovery and Objections upon the individual(s) named below in the manner noted:

Anita Moore, 200 W Front Street, Room #1107 Boise, ID

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Interdepartmental Mail.
- ☒ By hand delivering copies of the same to defense counsel.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____

**Nehecc* 

NO. _____ FILED _____
A.M. _____ P.M. _____

APR 15 2014

CHRISTOPHER D. RICH, Clerk
By SARA WRIGHT
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

R. Mackay Hanks
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Fax: (208) 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
)	
vs.	)	REQUEST FOR DISCOVERY
)	
LORI ELIZABETH LOVELY,)	
)	
Defendant.)	
_____)	

TO THE ABOVE NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

(1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

(2) Reports of Examinations and Tests:

The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense Witnesses:

The prosecution requests the defendant to furnish the State with a list of names and addresses of witnesses the defendant intends to call at trial.

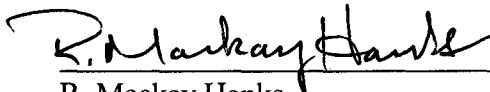
(4) Expert Witnesses:

The prosecution requests the defendant to provide a written summary or report of any testimony that the defense intends to introduce pursuant to Idaho Criminal Rule 16(c)(4), including the facts and data supporting the opinion and the witness's qualifications.

(5) Pursuant to Idaho Code Section 19-519, the State hereby requests that the defendant state in writing within ten (10) days any specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 15 day of April 2014.

GREG H. BOWER
Ada County Prosecuting Attorney



R. Mackay Hanks
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of April 2014, I caused to be served, a true and correct copy of the foregoing Request for Discovery upon the individual(s) named below in the manner noted:

Anita Moore, 200 W Front Street, Room #1107 Boise, ID

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Interdepartmental Mail.
- ☒ By hand delivering copies of the same to defense counsel.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____

**Mikael*

Time	Speaker	Note
<u>2:03:58 PM</u>	Defendant	Lori Elizabeth Lovely FE-14-4550 Present in Custody
<u>2:04:14 PM</u>	Judge	Judge James Cawthon
<u>2:04:19 PM</u>	State	Kale Gans, AC Prosecutor
<u>2:04:21 PM</u>	Defense	Anita Moore, AC Public Defender
<u>2:04:25 PM</u>	Kale Gans, AC Prosecutor	files an amended complaint
<u>2:04:53 PM</u>	Anita Moore, AC Public Defender	Moves to exclude witnesses
<u>2:04:58 PM</u>	Judge James Cawthon	Witness are excluded
<u>2:05:19 PM</u>	Kale Gans, AC Prosecutor	Direct Examination of the Witness
<u>2:05:20 PM</u>	state Witness #1	William R. Arthur, Sworn
<u>2:05:27 PM</u>	Kale Gans, AC Prosecutor	Direct Examination of the Witness
<u>2:05:28 PM</u>	William R. Arthur	BPD
<u>2:05:41 PM</u>	Anita Moore, AC Public Defender	stipulation to training and experience
<u>2:06:10 PM</u>	William R. Arthur	Greyhound bus station
<u>2:07:10 PM</u>	William R. Arthur	Certified K-9
<u>2:09:19 PM</u>	William R. Arthur	odor coming from the bag
<u>2:09:47 PM</u>	William R. Arthur	large quantity of marijuana inside
<u>2:10:42 PM</u>	William R. Arthur	describes the package
<u>2:11:45 PM</u>	William R. Arthur	other bag had an odor, similarly packaged bags
<u>2:12:49 PM</u>	William R. Arthur	said she had a "script" for medical marijuana
<u>2:14:05 PM</u>	Anita Moore, AC Public Defender	Moves to strike
<u>2:20:00 PM</u>	William R. Arthur	Nothing further, witness steps down
<u>2:20:09 PM</u>	State Witness #2	Officer Zubazareta, Sworn
<u>2:21:09 PM</u>	Anita Moore, AC Public Defender	stipulates to officers training and experience
<u>2:21:32 PM</u>	Kale Gans, AC Prosecutor	Direct Examination of the Witness
<u>2:21:34 PM</u>	William R. Arthur	Describes the contents of the luggage
<u>2:25:47 PM</u>	Anita Moore, AC Public Defender	Cross Examination of the Witness
<u>2:25:47 PM</u>	William R. Arthur	41 pounds includes packaging (heat sealed containers)
<u>2:26:08 PM</u>	William R. Arthur	Nothing further, witness steps down
<u>2:26:14 PM</u>	Kale Gans, AC Prosecutor	moves to admit states #1 & #2 - Lab Results
<u>2:26:59 PM</u>	Anita Moore, AC Public Defender	no objection for today's hearing to states #1 and #2

<u>2:27:37 PM</u>	Kale Gans, AC Prosecutor	state Rests
<u>2:27:44 PM</u>	Kale Gans, AC Prosecutor	submits and reserves rebuttal
<u>2:28:07 PM</u>	Judge James Cawthon	find PC
<u>2:28:09 PM</u>	Anita Moore, AC Public Defender	Motion for Bond Reduction
<u>2:28:47 PM</u>	Kale Gans, AC Prosecutor	response
<u>2:29:02 PM</u>	Judge James Cawthon	Motion denied
<u>2:29:06 PM</u>	Judge James Cawthon	Judge Finds PC, Case Bound Over to Judge Hippler 4-22-14 at 9 Commitment Signed state signs for exhibits
<u>2:29:55 PM</u>		

APR 16 2014

CHRISTOPHER D. RICH, Clerk
By HEIDI MANLEY
DEPUTY

DR # 14-406577

GREG H. BOWER
Ada County Prosecuting Attorney

R. Mackay Hanks
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
vs.)	
	)	AMENDED
LORI ELIZABETH LOVELY,	)	COMPLAINT
)	
Defendant.	)	Lovely's [REDACTED]
_____	)	[REDACTED]

PERSONALLY APPEARED Before me this 16 day of April 2014, R. Mackay Hanks, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did commit the crimes of: I. TRAFFICKING IN MARIJUANA, FELONY, I.C. §37-2732B(a)(1) and II. POSSESSION OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(c) as follows:

COUNT I

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did knowingly possess and/or bring into this state twenty-five (25) pounds or more of Marijuana, a Schedule I non-narcotic controlled substance.

COUNT II

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

GREG H. BOWER
Ada County Prosecutor


for R. Mackay Hanks
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 16 day of April 2014.


Magistrate



APR 16 2014

CHRISTOPHER D. RICH, Clerk
By HEIDI MANLEY
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

R. Mackay Hanks
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
)	
vs.	)	COMMITMENT
)	
LORI ELIZABETH LOVELY,)	
	)	Defendant's 
Defendant.)	
)	

THE ABOVE NAMED DEFENDANT, LORI ELIZABETH LOVELY, having been brought before this Court for a Preliminary Examination on the 16 day of April, 2014, on a charge that the Defendant on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did commit the crimes of: I. TRAFFICKING IN MARIJUANA, FELONY, I.C. §37-2732B(a)(1) and II. POSSESSION OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(c) as follows:

COUNT I

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did knowingly possess and/or bring into this state twenty-five (25) pounds or more of Marijuana, a Schedule I non-narcotic controlled substance.

COUNT II

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

The Defendant having so appeared and having had/having waived preliminary examination, the Court sitting as a Committing Magistrate finds that the offense charged as set forth has been committed in Ada County, Idaho, and that there is sufficient cause to believe that the Defendant is guilty of committing the offense as charged.

WHEREFORE, IT IS ORDERED that the Defendant be held to answer to the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, to the charge herein set forth. Bail is set in the sum of \$ _____.

DATED this 16 day of April, 2014.


MAGISTRATE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FILED 4-16-14 AT 230 P.M.
CHRISTOPHER D. RICH,
CLERK OF THE DISTRICT COURT
BY [Signature]
Deputy

STATE OF IDAHO,

Plaintiff,

vs.

Lori Elizabeth Lovely
Defendant.

PRELIMINARY HEARING NOTICE / MINUTE SHEET

Case Number: FE14-4550

Case Called: Cawthon 20358

☒ Ada ☐ Special K. Gans

☒ PD ☐ Private A. Moore

Defendant: ☒ Present ☐ Not Present ☒ In Custody ☐ PD Appointed ☐ Waived Attorney

☐ Advised of Rights ☐ Waived Rights ☐ In Chambers ☐ Interpreter

☐ Bond \$ 350,000 ☐ Pre-Trial Release Order ☒ Motion for Bond Reduction Denied / Granted

☐ Amended Complaint Filed ☐ Complaint Amended by Interlineation ☐ Reading of Complaint Waived

☐ State / Defense / Mutual Request for Continuance

☐ State / Defense Objection / No Objection to Continuance

☐ Case continued to at am/pm for

☐ Defendant Waives Preliminary Hearing ☒ Hearing Held ☒ Commitment Signed

☒ Case Bound Over to Judge Hippler on 4-22-14 at 9:00 am/pm

☐ Case Dismissed after Preliminary Hearing / On State's Motion ☐ Release Defendant, This Case Only

ADA COUNTY COURTHOUSE, 200 W. FRONT STREET, BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

I hereby certify that copies of this notice were served as follows:

Defendant: ☒ Hand Delivered ☐ Via Counsel Signature [Signature]

Defense Atty: ☐ Hand Delivered ☐ Intdept Mail

Prosecutor: ☒ Hand Delivered ☐ Intdept Mail

By: [Signature]
Deputy Clerk

DATED 4-16-14

128
Am
4/22
9-

NO. _____
A.M. _____ FILED P.M. 2015

APR 17 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Kimberly Simmons
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

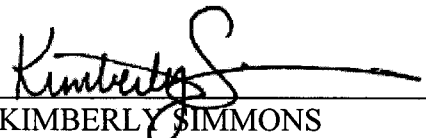
Defendant.

Case No. CR-FE-2014-0004550

MOTION FOR BOND REDUCTION

COMES NOW the defendant, LORI ELIZABETH LOVELY, by and through her attorney, Kimberly Simmons, Ada County Public Defender's Office, and moves this Court for an order reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied her right to bail.

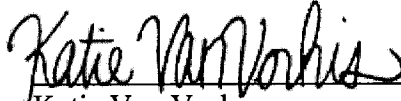
DATED this 17th day of April 2014.


KIMBERLY SIMMONS
Attorney for Defendant



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of April 2014, I mailed a true and correct copy of the foregoing to R. Mackay Hanks, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.


Katie Van Vorhis

NO. _____ FILED _____
A.M. _____ P.M. _____

APR 17 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Kimberly Simmons
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN to all parties that the Court will call on for hearing the Defendant's Motion for Bond Reduction. Said hearing shall take place on **April 22, 2014, at the hour of 9:00 a.m.**, in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

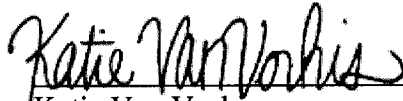
DATED this 17th day of April 2014.


KIMBERLY SIMMONS
Attorney for Defendant

 NOTICE OF HEARING

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of April 2014, I mailed a true and correct copy of the foregoing to R. Mackay Hanks, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.


Katie Van Vorhis

128
Am
4/22
9-

NO. _____ FILED _____
A.M. _____ P.M. _____

APR 17 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Kimberly Simmons
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

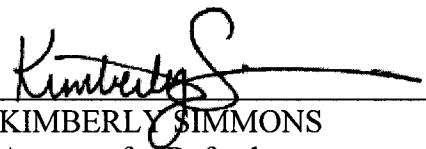
Defendant.

Case No. CR-FE-2014-0004550

**MOTION FOR PRELIMINARY
HEARING TRANSCRIPT**

COMES NOW the defendant, LORI ELIZABETH LOVELY, by and through her attorney, Kimberly Simmons, Ada County Public Defender's Office, and moves this Court, pursuant to Idaho Criminal Rule 5.2(a), for an order providing typewritten transcripts of the preliminary hearing proceedings held on April 16, 2014, as they are essential and necessary for filing pretrial motions. The defendant, being indigent, also requests that the transcripts be prepared at the cost of Ada County, and as soon as possible.

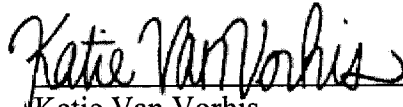
DATED this 17th day of April 2014.


KIMBERLY SIMMONS
Attorney for Defendant

Q

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of April 2014, I mailed a true and correct copy of the foregoing to the **Ada County Transcript Coordinator** by placing the same in the Interdepartmental Mail.


Katie Van Vorhis

128
APR
11/22
12/22

NO. 10 FILED
A.M. 10 P.M.

APR 18 2014

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
)	
vs.	)	INFORMATION
)	
LORI ELIZABETH LOVELY,	)	Defendant's [REDACTED]
)	
Defendant.)	
_____)	

GREG H. BOWER, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that LORI ELIZABETH LOVELY is accused by this Information of the crime of: I. TRAFFICKING IN MARIJUANA, FELONY, I.C. §37-2732B(a)(1) and II. POSSESSION OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(c) which crimes were committed as follows:

COUNT I

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did knowingly possess and/or bring into this state twenty-five (25) pounds or more of Marijuana, a Schedule I non-narcotic controlled substance.

COUNT II

That the Defendant, LORI ELIZABETH LOVELY, on or about the 1st day of April, 2014, in the County of Ada, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



GREG H. BOWER

Ada County Prosecuting Attorney

Ada County Mugshot - Prosecutor's Office

User: PRKNUTRS



Photo Taken: 2014-04-01 15:27:12

Name: LOVELY, LORI ELIZABETH

Case #: CR-FE-2014-0004550

LE Number: 1056534

Weight: 120

Drivers License Number:

Drivers License State:

Sex: F **Race:** W **Eye Color:** BLU **Hair Color:** BLN **Facial Hair:**

Marks: ARM, RIGHT UPPER

Scars:

Tattoos:

000043

APR 21 2014

CHRISTOPHER D. RICH, Clerk
By LARA AMES
DEPUTYADA COUNTY PUBLIC DEFENDER
Attorney for DefendantKimberly Simmons
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

RECEIVED

APR 17 2014

Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

ORDER FOR PRELIMINARY
HEARING TRANSCRIPT

Based upon the Defendant's Motion for Preliminary Hearing Transcript pursuant to Idaho Criminal Rule 5.2(a), this Court hereby orders that a typewritten transcript of the preliminary hearing held April 16, 2014, be prepared as soon as possible. The transcript shall be prepared at the cost of Ada County.

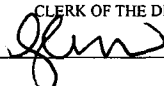
IT IS SO ORDERED.

DATED this 21 day of April 2014.
STEVEN J. HIPPLER
District Judge

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>9:05:22 AM</u>	Judge	Rights and procedures for Criminal Arraignments
<u>9:05:34 AM</u>	Judge	Arraigns Ryan Ayres, Lori Lovely, Kimberly Robinson on charges filed; Advice of Rights
<u>9:11:17 AM</u>		End of Case
<u>9:15:49 AM</u>	Judge	Court calls case CRFE-14-04550 St. v. Lori Lovely Arraignment
<u>9:16:15 AM</u>	State	Shelly Akamatsu
<u>9:16:25 AM</u>	Public Defender	Terri Jones/Kimberly Simmons
<u>9:16:31 AM</u>	Defendant	Present in Custody
<u>9:16:37 AM</u>	Judge	Arraigns defendant on information. Reads charges, penalties, fines, restitution
<u>9:19:51 AM</u>	Defendant	Reads, writes, understands English language. Waives formal reading. True name spelled correctly. Correct SSN. Understands charges and penalties. Understands advice of rights. No questions for Atty.
<u>9:20:52 AM</u>	Public Defender	We would like a set over. Will argue bond.
<u>9:21:14 AM</u>	Judge	Entry of Plea 5/13 at 9am
<u>9:21:52 AM</u>		End of Case
<u>9:21:52 AM</u>		

Time	Speaker	Note
09:46:14 AM	Judge	Court calls case CRFE14-4550 State v Lori Lovely Entry of Plea
09:46:30 AM	State	Brent Ferguson
09:46:35 AM	Public Defender	Terri Jones
09:46:39 AM	Defendant	Present in custody
09:46:49 AM	Public Defender	She will enter a NG plea
09:49:26 AM	Judge	4 day JT September 15, 2014. PTC September 2 at 3pm. Status Conference September 2. Discovery Cutoff July 18
09:49:31 AM	Public Defender	Makes bond argument
09:50:46 AM	State	Argument against bond
09:53:03 AM	Public Defender	No reply
09:53:06 AM	Judge	Remarks about motions for reduction in bond. Court is concerned about lack of ties to Idaho and inability to monitor the defendant in another state. Will deny motion for bond reduction. Prior convictions were also a consideration
09:54:37 AM		End of Case
09:54:38 AM		

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FILED	May 13 14	AT 9:50 AM
CHRISTOPHER D. RICH CLERK OF THE DISTRICT COURT		
BY		Deputy Clerk

THE STATE OF IDAHO,

Plaintiff,

vs.

Lori Lovely

Defendant.

Case No. CR-FE-14-4550

**ORDER GOVERNING FURTHER
CRIMINAL PROCEEDINGS AND
NOTICE OF TRIAL SETTING**

IT IS HEREBY ORDERED as follows:


- (1) Compliance date for discovery is set on or before July 18, 2014.
- (2) Status conference will be held on Aug 26, 2014 at 3:00 p.m. wherein defendant(s) must be personally present in court.
- (3) Pretrial conference will be held on Sept 2, 2014 at 3:00 p.m. wherein defendant(s) must be personally present in court.
- (4) Jury trial will be held on Sept 15, 2014 at 9:00 a.m. and shall be scheduled for 4 ~~16~~ days. The order of the jury panel will be drawn by lot the afternoon before the day of trial in chambers. Counsel may be present for the drawing of the names.
- (5) Notice is hereby given, pursuant to Rule 25(a)(6), I.C.R. that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

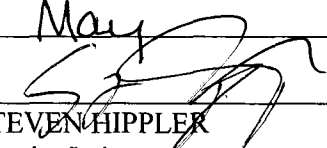
Hon. G.D. Carey	Hon. W.H. Woodland	Hon. Dennis Goff	Hon. Ronald Wilper
Hon. Daniel C. Hurlbutt, Jr.	Hon. James Judd	Hon. Duff McKee	Hon. Renee Hoff
Hon. Michael McLaughlin	Hon. Gerald Schroeder	Hon. Kathryn Sticklen	
Hon. Darla Williamson	Hon. Gregory M. Culet	Hon. James Morfitt	

ALL SITTING FOURTH DISTRICT JUDGES

- (6) **Defendant shall file all pretrial motions governed by Rule 12 of the Idaho Criminal Rules no later than fourteen (14) days after the compliance date set for discovery or otherwise show good cause, upon formal motion, why such time limits should be extended.** All such motions must be brought on for hearing within fourteen (14) days after filing or forty-eight (48) hours before trial, whichever is earlier. All motions *in limine* shall be in writing and filed no later than five (5) days prior to the pretrial conference. **All Motions to Suppress Evidence must be accompanied by a brief setting forth the factual basis and legal basis for the suppression of evidence.**

IT IS SO ORDERED this 13 day of May, 20 14.


Defendant's Signature


STEVEN HIPPLER
District Judge

cc: Hand delivered to Defendant and Counsel

000048

JUL 29 2014

CHRISTOPHER D. RICH, Clerk
By SHERRI BOUCHER
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Kimberly Simmons
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

MOTION TO ENLARGE TIME

COMES NOW the defendant, LORI ELIZABETH LOVELY, by and through her attorney, Kimberly Simmons, Ada County Public Defender's Office, and moves this Court, pursuant to Idaho Criminal Rule 12(d), for an order enlarging time to file pretrial motions in the above-entitled case.

Counsel needs more time to prepare a Motion to Suppress in this case because the preliminary hearing transcript that was ordered to be prepared on April 21, 2014, has not been received. Counsel will be able to file said Motion within one week from the receipt of the transcript.

DATED this 29th day of July 2014.

KIMBERLY SIMMONS
Attorney for Defendant

MOTION TO ENLARGE TIME

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29 day of July 2014, I mailed a true and correct copy of the foregoing to Joshua Haws, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.


Katie Van Vorhis

128
145
8/26
3-

NO. 1040
A.M. FILED P.M.

JUL 30 2014

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Kimberly Simmons
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

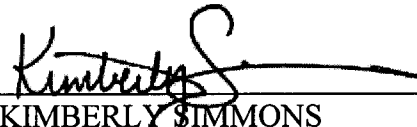
Defendant.

Case No. CR-FE-2014-0004550

NOTICE OF HEARING

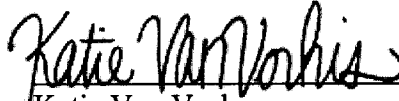
NOTICE IS HEREBY GIVEN to all parties that the Court will call on for hearing the Defendant's Motion to Enlarge Time. Said hearing shall take place on August 5, 2014, at the hour of 4:00 p.m., in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED this 29th day of July 2014.


KIMBERLY SIMMONS
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of July 2014, I mailed a true and correct copy of the foregoing to Joshua Haws, Ada County Prosecutor's Office, by placing the same in the Interdepartmental Mail.


Katie Van Vorhis

JUL 30 2014

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.) Case No. CRFE-2014-0004550
)
 LORI E. LOVELY,) NOTICE OF PREPARATION
) OF PRELIMINARY HEARING
 Defendant,) TRANSCRIPT
)
 _____)

An Order for transcript was filed in the above-entitled matter on April 21, 2014, and a copy of said Order was received by the Transcription Department on July 30, 2014. I certify the estimated cost of preparation of the transcript to be:

Type of Hearing: Preliminary Hearing
Date of Hearing: April 16, 2014 Judge: James Cawthon
30 Pages x \$4.25 = \$127.50

In this case, the Ada County Public Defender's Office has agreed to pay for the cost of the transcript fee upon completion of the transcript.

The Transcription Department will prepare the transcript and file it with the Clerk of the District Court within thirty (30) days (or expedited days) from the date of this notice. The transcriber may make application to the District Judge for an extension of time in which to prepare the transcript.


Date: July 30, 2014

Rae Ann Nixon
Rae Ann Nixon
Transcript Coordinator

CERTIFICATE OF MAILING

I certify that on July 30, 2014, a true and correct copy of the Notice of Preparation of Transcript was forwarded to Defendant's attorney of record, by first class mail, at:

Ada Co. Public Defender
200 W. Front St. Ste. 1107
Boise ID 83702
KIMBERLY SIMMONS



Rae Ann Nixon
Transcript Coordinator

Time	Speaker	Note
<u>3:38:46 PM</u>		St. v. Lori Lovely Time Cust CRFE14-4550 Enlarge
<u>3:38:49 PM</u>	Judge	calls case, Defendant present in custody with PD Simmons
<u>3:39:01 PM</u>	State	Christopher Booker
<u>3:39:07 PM</u>	Judge	present for motion to enlarge time
<u>3:41:28 PM</u>	PD	understand the order may have fallen thru, but have been told the transcript will be ready soon; may have a suppression hearing
<u>3:42:43 PM</u>	Judge	Aug 25th @ 3pm, the suppression hearing
<u>3:44:10 PM</u>	PD	issues to be raised in suppression, the suitcases
<u>3:45:12 PM</u>		end of case

128
175
8/15
B

NO. _____
A.M. _____ FILED P.M. _____

AUG 15 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

KIMBERLY J. SIMMONS, ISB #6909
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

LORI E. LOVELY,

Defendant.

Case No. CR-FE-2014-4550

MOTION TO SUPPRESS

COMES NOW, LORI E. LOVELY, the above-named Defendant, by and through counsel at the Ada County Public Defender's Office, KIMBERLY J. SIMMONS, and moves this Court pursuant to I.C.R. 12(b)(3) to suppress any and all evidence and statements, admissions, and/or confessions made by and/or attributed to the Defendant that were obtained as the result of an illegal search and seizure. Based upon the police reports authored in connection with this case and testimony at the preliminary hearing, law enforcement officers violated Ms. Lovely's rights guaranteed by the Fourth and Fifth Amendments to the United States Constitution and Article I, sections 13 and 17, of the Idaho Constitution.

MOTION TO SUPPRESS

In support of his motion, Ms. Lovely offers for the Court's consideration a supporting brief, which is now on file with the Court.

DATED this 15th day of August 2014.


KIMBERLY J. SIMMONS
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15 day of August 2014, I mailed (served) a true and correct copy of the within instrument to:

JOSHUA HAWS
Ada County Prosecutor's Office
Interdepartmental Mail


Jennifer Vanderhoof

AUG 15 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

KIMBERLY J. SIMMONS, ISB #6909
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI LOVELY,

Defendant.

Case No. CR-FE-2014-4550

DEFENDANT'S BRIEF IN SUPPORT OF
MOTION TO SUPPRESS

I. STATEMENT OF THE CASE

A. Nature of the Case

Ms. Lovely's Motion to Suppress pursuant to I.C.R. 12(b)(3), filed August 15, 2014, contemporaneously.

B. Procedural History

Ms. Lovely was arrested on April 1, 2014 and subsequently charged by Information with the crimes of: Count I. TRAFFICKING IN MARIJUANA, a felony violation of Idaho Code §37-2732B(a)(1), and Count II. POSSESSION OF A CONTROLLED SUBSTANCE, a felony violation of I.C. §37-2734(c). A Preliminary Hearing was held on April 16, 2014, and the case was bound over to the District Court. Ms. Lovely entered pleas of Not Guilty to both counts on May 13, 2014, and her case

was set for trial. Ms. Lovely's Motion to Suppress and the supporting brief contained herein follow.

C. Statement of Facts

On April 1, 2014 at about 9:51 a.m., Corporal Matt Walker of the Boise Police Department was dispatched to the Greyhound Bus Depot in Boise, Idaho in reference to a narcotics call. He was informed that a Greyhound employee had located a bag on a bus that was emanating an odor of marijuana. Upon his arrival at the Depot, Corporal Walker spoke with Ward Eversull, an agent with Greyhound. Mr. Eversull told the officer that when he opened the baggage compartment under the bus, he could smell marijuana. He located the bag from which the odor appeared to be coming, then closed the baggage compartment and called the police. Corporal Walker was dispatched pursuant to the call, as were Officers Daniel Ryan and Anthony Dotson.

Officer Randy Arthur arrived shortly thereafter, pursuant to an assist request by Corporal Walker, with his drug-detecting dog, Rocky. Corporal Walker relayed the above information to Officer Arthur. A Greyhound employee then opened the baggage compartment for Officer Arthur and pointed to the bag that was emitting the odor of marijuana, a red canvas-like full size suitcase. Officer Arthur deployed Rocky into the baggage compartment.

Pursuant to his report, Rocky became excited and his sniffing increased when he moved towards the red bag. Rocky then jumped on top of the bag. He crouched on the bag inside the compartment, then jumped off the bag to the pavement. Rocky looked at Officer Arthur in an excited fashion, barked and then sat back in what Officer Arthur describes as a final response. Officer Arthur states in his report that Rocky is not trained to bark, but becomes excited in these situations. Officer Arthur claims that Rocky provided an alert based on his observations. At the Preliminary Hearing in this case, Officer Arthur testified:

So when he first responded he was kind of in a crouched position, he ultimately hopped out and sat and gave a sit alert. I say "alert," it's actually a final response if we are going to get very technical about it, because that is his trained response when he can is actually get into a physical sit position. There will be times when a dog can't physically sit, so you don't necessarily get that out of them even though they are still alerting.

So he did that both –I could see alert inside by the change of behavior of this sniffing behavior, his sniffing the seams very hard, looking back at you with an excited look because he gets a ball and he loves his ball. And ultimately he hopped out and sat on the asphalt and ultimately started barking at me, which is not normal, but it was obviously a very excited response on his part.

(Tr., 4/16/14, p. 8, Ls.1-18.) Based upon this observed behavior, and the fact that Officer Arthur smelled marijuana, he asked Corporal Walker to seize the bag. Corporal Walker seized the bag and took it to an office to open it. While Corporal Walker searched the red bag, Officer Arthur and Mr. Eversull returned to the bus to look for a second bag, as the tag indicated there was another bag belonging to the same person. Mr. Eversull located a large black suitcase with the same name as the red bag, and handed it to Officer Arthur. Officer Arthur smelled the odor of marijuana coming from the bag. He broke the zipper on the bag and opened it, finding bags of what appeared to be marijuana. Corporal Walker also located several bags of alleged marijuana in the red bag.

Meanwhile, Officer Ryan went to the lobby of the Bus Depot to locate Ms. Lori Lovely, as her name was on the two bag-tags. He escorted her to the office where Corporal Walker and Officer Arthur were. While Officer Ryan arrested Ms. Lovely, she inquired as to the reason for her arrest. He told her it was because of the suspected marijuana found in the suitcases. Ms. Lovely told Officer Ryan that she knew about the marijuana, and that she had a script for it. Corporal Walker then contacted narcotics detectives who instructed him to have Ms. Lovely transported to CID for an interview. The suitcases, Ms. Lovely and her personal property were all transported to CID. A search of her purse incident to arrest revealed Ms. Lovely's California ID card, medical marijuana card, bus tickets and baggage claim tickets.

Upon arrival at CID, Ms. Lovely was interviewed by Detective Coy Bruner. The evidence was photographed and processed by Officer Kepa Zubizarreta. Detective Bruner provided Ms. Lovely with a Notification of Rights form, which she signed and then agreed to speak with him. The subsequent interview wasn't recorded in which Ms. Lovely made several admissions. Ms. Lovely indicated she left Redding, CA on March 31st on the Greyhound Bus, headed to Minneapolis, MN. She expected to arrive on April

3rd. Ms. Lovely admitted the purpose of her trip was to deliver "weed," a trip planned and arranged by Mike LNU. She indicated that Mike had given her the suitcases on Sunday, March 30th. They were already packed and locked. He also gave her \$500 to purchase a bus ticket. He instructed her to buy a bus ticket from Redding to Portland, OR. Once in Portland, she was to buy a bus ticket to Minneapolis. The purpose of the route was to avoid detection by law enforcement.

Ms. Lovely allegedly made several other admissions during the interview including the fact that she knew it was illegal to transport marijuana from California to Minneapolis. She also stated that when she saw the drug-detecting dog, she decided to just walk away from the Bus Depot. She thought better of it and returned to the Depot to be confronted by law enforcement.

She also gave Detective Bruner consent to search her phone and purse. Pursuant to this consent, Officer Zubizarreta was asked to search her purse. He located a metal lipstick case that contained a small baggie containing a white substance he suspected was methamphetamine. Ms. Lovely ultimately admitted that it was possible that there may be some methamphetamine in her purse.

Subsequently, Ms. Lovely was transported to the Ada County Jail where she was booked in by Corporal Walker on charges of Trafficking Marijuana and Possession of Methamphetamine.

II. ISSUE PRESENTED FOR REVIEW

Were Ms. Lovely's Fourth Amendment rights against unreasonable searches and seizures violated when her luggage was seized and searched without a warrant?

III. ARGUMENT

Ms. Lovely's Fourth Amendment Right Against Unreasonable Searches And Seizures Was Violated When Her Luggage Was Seized And Searched Without a Warrant

A. Ms. Lovely Had A Legitimate Expectation Of Privacy In Her Luggage

The Fourth Amendment provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported

by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST, AMEND. IV. The scope of the protection afforded by the Fourth Amendment is defined in terms of the individual's "legitimate expectation of privacy." *Smith v. Maryland*, 442 U.S. 735, 740 (1979); *Katz v. United States*, 389 U.S. 347, 351 (1967). The U.S. Supreme Court has recognized that an individual possesses a legitimate expectation of privacy in the contents of his or her luggage. *United States v. Place*, 462 U.S. 696, 707 (1983); *Arkansas v. Sanders*, 442 U.S. 753, 762 (1979). Recognition of this right is reasonable. "The law obviously does not insist that a person assertively clutch an object in order to retain the protection of the fourth amendment." *United States v. Thomas*, 864 F.2d 843, 846 (D.C. Cir. 1989).

Unless a search falls within one of the well-delineated exceptions to the warrant requirement, warrantless searches are per se unreasonable under the Fourth Amendment. *State v. Aschinger*, 149 Idaho 53, 55-56 (Ct.App. 2009). The prosecution bears the burden of showing that a warrantless search falls within one of the exceptions to the warrant requirement. *Id.*

Under the automobile exception, police may search an automobile and the containers within it when they have probable cause to believe that the automobile contains contraband or evidence of a crime. *State v. Gallegos*, 120 Idaho 894, 898, (1991). Probable cause is a flexible, common-sense standard. A practical, nontechnical probability that incriminating evidence is present is all that is required. *Texas v. Brown*, 460 U.S. 730, 742, (1983). The automobile exception, however, does not generally extend to the warrantless search of luggage within an automobile. *Sanders*, 442 U.S. at 765. In the absence of exigent circumstances, law enforcement must obtain a warrant before searching luggage taken from an automobile. *Id.*

Ms. Lovely checked two bags when she boarded the bus in California. She did not lose her expectation of privacy in said bags by allowing them to be placed inside the baggage compartment. Thus a search of the bags must fall under the protection of the Fourth Amendment. The warrantless search of the bags violated Ms. Lovely's constitutional rights unless the State can prove that the search fell within one of the well-delineated exceptions to the warrant requirement. Ms. Lovely contends that the State cannot provide such proof to the Court because the odor of marijuana is not

enough and the alleged alert by Rocky was not reliable to provide sufficient probable cause.

B. Officer Arthur's Narcotic-Detecting K-9 Did Not Provide A Reliable Alert In Order To Establish Probable Cause To Seize And Search Ms. Lovely's Luggage

The U.S. Supreme Court has held that a drug dog sniff is not a search and therefore may be done during a traffic stop without a reasonable suspicion of drug activity, *see Caballes*, 543 U.S. at 409, and it is not necessarily a Fourth Amendment violation for an officer who has stopped someone for a traffic violation to ask unrelated questions about drugs and weapons, or to run a drug dog around the perimeter of the vehicle. *See, e.g., Parkinson*, 135 Idaho at 362-63. However, the *Caballes* court was careful to note that the duration of the stop there at issue was not lengthened by the use of the drug dog. *Caballes*, 543 U.S. at 407-408 (2005). The Supreme Court has further held that subjecting luggage to dog sniffs does not constitute a search or seizure. *Place*, 462 U.S. at 696. However, investigation that goes beyond this generally becomes intrusive and invokes the Fourth Amendment. *People v. Ortega*, 34 P.3d 986, 991 (Colo. 2001). *See also Place*, 462 U.S. at 708-709.

It is essential to note that if a narcotics detecting dog is used, the dog must be trained and reliable. When a **reliable** drug-detection dog indicates that a lawfully stopped automobile contains the odor of controlled substances, the officer has probable cause to believe that there are drugs in the automobile and may search it without a warrant. *State v. Tucker*, 132 Idaho 841, 843, (1999) (emphasis added); *Gallegos*, 120 Idaho at 898. The U.S. Supreme Court has held that "the use of a **well-trained** narcotics-detection dog—one that does not expose noncontraband items that otherwise would remain hidden from public view . . . during a lawful traffic stop, generally does not implicate legitimate privacy interests." *Illinois v. Caballes*, 543 U.S. 405, 409 (2005) (citations and quotations omitted).

A recent study conducted at UC Davis uncovered that drug-sniffing canines are affected by human handlers' beliefs, which is possibly in response to subtle, unintentional cues from the handler. The study was published in the January 2011 issue of the journal *Animal Cognition*, according to a news feed from UC Davis.

To evaluate the effects of handler beliefs and expectations on detection-dog performance, the researchers recruited 18 handler-detection dog teams from law-enforcement agencies. All of the teams were certified by an agency for either drug detection, explosives detection or both drug [sic].

The dogs all were trained to either alert passively at the location of a scent by sitting or laying down, alert actively by barking, or by doing both. The teams included 14 male dogs and four female dogs, including Labrador retrievers, Belgian Malinois, German Shepherd dogs and Dutch Shepherd dogs. The dogs' level of experience ranged from two to seven years. Their human partners had as many as 18 years of dog-handling experience.

The setting for the study was a church—selected because it was unlikely to have contained either explosives or drugs in the past—where neither the dogs nor the handlers had been before. The researchers created four separate rooms for the dogs to examine or “clear.”

The handlers were told that there might be up to three of their target scents in each room, and that there would be a piece of red construction paper in two of the rooms that identified the location of the target scent. However, there were no target scents—explosives or drugs—placed in any of the rooms.

Each room represented a different experimental condition or scenario:

- There was one room where the experimenter did nothing—she walked in and walked out;
- In one room she had taped a piece of red construction paper to a cabinet;
- In another she had placed decoy scents, two sausages and two tennis balls hidden together out of view;
- In the last room she had placed a piece of red construction paper at the location of hidden decoy scents, two sausages and two tennis balls.

The dog-handler teams conducted two separate five-minute searches of each room. When handlers believed their dogs had alerted, indicated a target scent, an observer recorded the location indicated by handlers. Search orders were counterbalanced; that is, all teams searched the rooms in a different order.

Although there should have been no alerts in any of the rooms, there were alerts in all rooms. Moreover, there were more alerts at the locations indicated by construction paper than at either of the locations containing just the decoy scents or at any other locations.

Supra note 8; see Lisa Lilt et al., Handler Beliefs Affect Scent Detection Dog Outcomes, *AnimCogn* (2011) 14:387-394 (Defense Exhibit A).

Upon arrival at the Bus Depot, Officer Arthur was told which bag the Greyhound bus employee thought contained illegal contraband. With this knowledge, Officer Arthur placed his drug-detecting K-9, Rocky, inside the baggage compartment. Officer Arthur testified that Rocky became excited and began to sniff rapidly within the compartment, eventually standing on top of the suspected bag. Rocky eventually jumped back onto the pavement and barked while sitting. Officer Arthur admits in his sworn testimony that this is not normal for Rocky. In fact, the Officer even notes that Rocky was excited because he gets a ball with which to play.

For probable cause to be found, the drug-detecting dog should be properly trained and certified in order to ensure a reliable alert. *United States v. Jacobs*, 986 F.2d 1231 (8th Cir. 1993); *United States v. Spetz*, 721 F.2d 1457, 1464–65 (9th Cir. 1983) (validly conducted dog sniff supplies probable cause “only if **sufficient reliability** is established by the application for the warrant”), *overruled on other grounds sub nom United States v. Bagley*, 765 F.2d 836 (9th Cir.1985), cert. denied, 475 U.S. 1023 (1986). *See also United States v. Rivas*, 157 F.3d 364 (5th Cir. 1998) (Casting or a “weak alert” is not sufficient to justify a search without a warrant. The State has the burden of proof when it searches without a warrant.). In *Jacobs*, a suspicious package was sniffed by a drug-detecting dog, Turbo. 986 F.2d 1231. Turbo showed an interest in the package by pushing it around with his nose and scratching at it twice, but this action did not amount to an official alert. The dog’s handler was not sure that the package contained drugs. Officer Henderson relayed information by telephone to Officer Brotherton, (the officer obtaining the warrant) that the dog had not given a full alert, but had shown an interest in the package. The magistrate judge was informed by Officer Brotherton that Turbo had shown an interest in the package, but the magistrate judge was not told that Turbo had failed to give a full alert to the package. After Officer Henderson’s first call, a second dog examined the package and failed to alert or show and interest in it. Officer Henderson called Officer Brotherton a second time and learned that the search warrant had been issued. Officer Henderson told Officer Brotherton that a second drug dog had arrived and they were going to wait until this dog could conduct a sniff before executing the warrant. Apparently, neither, Officer Brotherton nor the magistrate judge was informed of the results of the second sniff.

The Court held: "in this case, the failure to inform the magistrate judge that the dog had not given its trained response when confronted with a package containing drugs, coupled with the dogs handler's admission that he could not say with certainty that drugs were in the package, causes us to hold that the warrant would not have been supported by probable cause, if the omitted material had been included." *Id.* at 1235.

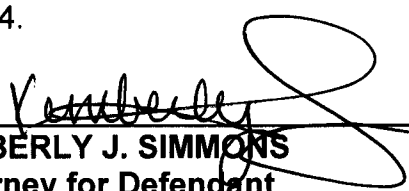
Alerts can be passive or aggressive. "The dog trained to alert aggressively tries to contact the scent source (biting, scratching, penetrating, attempting to retrieve), while the dog that alerts passively does not try to contact the scent source but instead performs trained behavior (sitting, looking at the source, sniffing toward the source, looking at the handler)." *United States v. Johnson*, 323 F.3d 566, 568 (7th Cir. 2003) (*quoting* Sandy Bryson, *Police Dog Tactics* 257 (2d ed.2000)).

Dogs exhibit changes in behavior for many different reasons. The purpose in training a drug-detecting dog to alert in a particular manner is to ensure that the alert is reliable, and that the dog is not reacting to something other than illegal narcotics. In this case, Rocky did not provide the trained alert required, making the alleged alert as observed by Officer Arthur unreliable. Counsel is unaware of Rocky's type of trained alert (aggressive v. passive), but Rocky did not bite, scratch or attempt to retrieve the bag, nor did he sit, looking at the source, sniffing at the source and looking at his handler. Rocky did not provide an aggressive or a passive alert. Thus the change in behavior observed by Officer Arthur was not sufficient to establish the requisite probable cause needed to search and seize Ms. Lovely's bag. The seizure of Ms. Lovely's bag and the subsequent search without a warrant was unlawful. Any evidence obtained as a result of the search should be suppressed.

IV. CONCLUSION

The warrantless search and seizure of Ms. Lovely's luggage violated her Fourth Amendment protection against unreasonable searches and seizures. The evidence seized as a result should be suppressed, including any and all tangible evidence as well as any and all statements, confessions, and/or admissions made by and/or attributed to Ms. Lovely. If this evidence were not excluded, Ms. Lovely's rights guaranteed by the Fourth and Fifth Amendments to the United States Constitution and Article I, sections 13 and 17, of the Idaho Constitution would be violated.

DATED this 15th day of August 2014.



KIMBERLY J. SIMMONS
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15 day of August 2014, I mailed (served) a true and correct copy of the within instrument to:

JOSHUA HAWS
Ada County Prosecutor's Office
Interdepartmental Mail



Jennifer Vanderhoof

Handler beliefs affect scent detection dog outcomes

Lisa Lit · Julie B. Schweitzer · Anita M. Oberbauer

Received: 30 March 2010 / Revised: 13 December 2010 / Accepted: 14 December 2010 / Published online: 12 January 2011
© The Author(s) 2011. This article is published with open access at Springerlink.com

Abstract Our aim was to evaluate how human beliefs affect working dog outcomes in an applied environment. We asked whether beliefs of scent detection dog handlers affect team performance and evaluated relative importance of human versus dog influences on handlers' beliefs. Eighteen drug and/or explosive detection dog/handler teams each completed two sets of four brief search scenarios (conditions). Handlers were falsely told that two conditions contained a paper marking scent location (human influence). Two conditions contained decoy scents (food/toy) to encourage dog interest in a false location (dog influence). Conditions were (1) control; (2) paper marker; (3) decoy scent; and (4) paper marker at decoy scent. No conditions contained drug or explosive scent; any alerting response was incorrect. A repeated measures analysis of variance was used with search condition as the independent variable and number of alerts as the dependent variable. Additional nonparametric tests compared human and dog influence. There were 225 incorrect responses, with no differences in mean responses across conditions. Response

patterns differed by condition. There were more correct (no alert responses) searches in conditions without markers. Within marked conditions, handlers reported that dogs alerted more at marked locations than other locations. Handlers' beliefs that scent was present potentiated handler identification of detection dog alerts. Human more than dog influences affected alert locations. This confirms that handler beliefs affect outcomes of scent detection dog deployments.

Keywords Dog · Canine · Scent detection · Social cognition · Interspecies communication

Introduction

In the early twentieth century, a horse named Clever Hans was believed to be capable of counting and other mental tasks. The psychologist Oskar Pfungst confirmed that Clever Hans was in fact recognizing and responding to minute, unintentional postural and facial cues of his trainer or individuals in the crowd (Pfungst 1911). The "Clever Hans" effect has become a widely accepted example not only of the involuntary nature of cues provided by onlookers in possession of knowledge unavailable to others, but of the ability of animals to recognize and respond to subtle cues provided by those around them. However, an additional important consideration was the willingness of onlookers to assign a biased interpretation of what they saw according to their expectations.

Experimental paradigms for investigation of animal behaviors are designed to minimize or eliminate confounds arising from the Clever Hans effect. Because the abilities of domestic dogs to respond to human social cues have been extensively documented (reviewed in Miklosi et al. 2007;

L. Lit
Department of Neurology, University of California at Davis,
Sacramento, CA 95817, USA

J. B. Schweitzer
Department of Psychiatry and Behavioral Science,
University of California at Davis, Sacramento, CA 95817, USA

A. M. Oberbauer
Department of Animal Science,
University of California at Davis, Davis, CA 95616, USA

L. Lit (✉)
M.I.N.D. Institute, University of California at Davis,
2805 50th Street, Room 2415, Sacramento, CA 95817, USA
e-mail: llit@ucdavis.edu

Reid 2009), a Clever Hans effect might be particularly prevalent in dogs. Indeed, the reliance of some dogs on human cues has been shown to override olfactory or visual cues indicating the location of food (Szetei et al. 2003). In one experiment, about 50% of dogs would go to an empty bowl indicated by human pointing rather than to a bowl in which the dog had seen and smelled food (Szetei et al. 2003).

This finding was notable in view of the exceptional olfactory acuity in the domestic dog. Humans have capitalized on dogs' olfactory sensitivity through use in an ever-expanding array of scent detection activities (e.g., Horvath et al. 2008; McCulloch et al. 2006; Oesterhelweg et al. 2008; Wasser et al. 2004). Scent detection dogs search an area as directed by their handlers, issuing an operant trained response ("alert") upon detection of their trained scent. However, scent detection dog performance is not solely dependent on olfactory acuity. Cognitive factors such as context dependence (Gazit et al. 2005) and the interaction between training paradigm and the nature of the detection problem (Lit 2009; Lit and Crawford 2006) also can impact performance.

Because the alerting response is initially trained by handler cueing upon dog interest in the desired target scent (e.g., Wasser et al. 2004), it is possible that dogs are also being conditioned to respond to additional unintentional human cues. Generally, trained dogs, including search and rescue dogs, look at humans less than untrained dogs in experimental paradigms requiring dogs to solve a problem such as opening a container (Marshall-Pescini et al. 2009, 2008; Prato-Previde et al. 2008). Indeed, an inverse relationship between owner/handler dependence and problem-solving performance had previously been identified; that is, a more dependent relationship in companion dogs fostered impaired problem-solving performance compared with working dogs (Topal et al. 1997).

Yet given the social cognitive abilities of the domestic dog, it is possible that even highly trained dogs might respond to subtle, unintentional handler cues. Dogs' biases for utilizing human movements or social cues impair decision-making and reasoning abilities (Erdohegyi et al. 2007). Dog behavior is further affected by owner/handler gender and personality (Kotrschal et al. 2009). Moreover, dogs evaluate attentional cues of their owners through cues including eye contact and human eye, head and body orientation (Schwab and Huber 2006). Dogs can further distinguish the focus of human attention, using other visual cues such as pointing, gazing, head nodding in the direction of a target, glancing at a target and head turns toward a target affect selection of a target object by a dog (Soproni et al. 2001; Viranyi et al. 2004). In fact, nonverbal cues including proximity of the human to the dog and contextual learning of verbal commands have been shown to moderate dog response to verbal commands (Fukuzawa et al. 2005).

For scent detection dog handlers, beliefs that scent is present might result in either sufficient inadvertent postural and facial cues so that dogs will respond regardless of the absence of scent, beliefs that dogs are providing their trained alert response or simply beliefs that alerts should be called regardless of dog behavior. All of these effects would result in false alerts identified by handlers. These handler beliefs might be influenced by human communication regarding target scent location. Alternatively, handler beliefs might be influenced by increased dog interest in a nontarget scent. The main questions of this study were to (1) determine whether handler beliefs affect detection dog outcomes and (2) evaluate relative importance of dog versus human influences on those beliefs. The present study attempted to determine whether handler beliefs of target scent location would affect outcomes in scent detection dog searches. Importantly, this study was not evaluating abilities of these detection dogs to detect their target scents. Because all dogs were certified, many with confirmed deployment finds their ability to correctly locate target scent was considered to be previously established. Therefore, in order to evaluate outcomes solely based on handler beliefs and expectations, this study was designed so that any alert issued would be a "false" alert; that is, there was no target scent present in any searches conducted for the purposes of this study.

Materials and methods

Handler/dog teams

A total of 18 handler/detection dog teams, recruited through word-of-mouth from multiple agencies, participated in this study. These teams were certified by a law enforcement agency for either drug detection ($n = 13$), explosives detection ($n = 3$), or both drug and explosives detection ($n = 2$). Demographic details of teams, including dog age, dog breed, dog years of detection experience and handler years of detection experience are presented in Table 1. Upon detection of target scent, all explosives dogs, both drug/explosives dogs and one drug detection dog were trained to issue a passive alert; that is, the dog would sit at the location of target scent detection. One drug detection dog was trained to issue a passive-active alert (sitting and barking), and all remaining drug dogs were trained to issue an active alert (barking) upon detection of target scent. All drug detection teams and two teams trained to find explosives had successfully identified their target scents in law enforcement deployment situations. Additional demographic information collected included handler years of experience handling detection dogs, dog years of scent detection experience, dog age and handler-reported breed of dog. In order to maintain

Table 1 Demographic data, $n = 18$ dog/handler teams

	Day	1	2	All
Dog sex	Male intact	4	9	13
	Male neutered	1	0	1
	Female intact	2	1	3
	Female spayed	0	1	1
Dog breed	GSD	2	1	3
	Labrador	1	0	1
	Belgian malinois	3	5	8
	Dutch shepherd	0	2	2
Dog age (years)	Mix	1	3	4
	Mean	5.0	7.2	6.4
	Median	4.0	6.0	5.8
	Low	2.0	5.0	2.0
Handler scent experience (years)	High	10.0	11.0	11.0
	Mean	5.6	4.0	4.6
	Median	2.0	3.0	3.0
	Low	1.0	1.0	1.0
Dog scent experience (years)	High	18.0	7.0	18.0
	Mean	2.2	3.3	2.9
	Median	1.3	2.0	1.5
	Low	1.0	0.4	0.4
	High	5.0	7.0	7.0

confidentiality, and so that individual teams could not be identified through demographic information, these data were collected anonymously and cannot be linked to any performance data. Due to subject availability, this study was completed across 2 days, with seven teams completing the experiment on the first day, and the remaining 11 teams completing the experiment on the second day.

Procedures

The experimental paradigm in this study was based on a paradigm previously applied to evaluate response conflict in disaster search dogs (Lit and Crawford 2006). Handlers conduct a series of short searches for their target scent across different search scenarios, each representing a different experimental condition. In the current study, there was no target scent present, so that any alert identified by handlers was considered a false alert.

Handler beliefs were influenced either by verbally communicating to the handlers that a specific marker was an indicator of scent location (i.e., human influence), by encouraging dogs to display unusual interest in a specific location with a decoy scent (i.e., dog influence), or by a specific marker that actually indicated the location of a decoy scent (combined human and dog influence). A 4-way single factor experimental design was used to test effects of these influences on handler beliefs. The independent

variable was search condition, a within-subjects variable with four levels:

1. *NULL* Unmodified.
2. *MARKED NULL* A piece of 8–1/2" × 11" red construction paper was taped to the door of a cabinet.
3. *UNMARKED DECOY* Two Slim-Jim sausages (removed from their wrappers and stored with their wrappers in an unsealed plastic bag) and a new tennis ball were hidden in the bottom of a pot and placed in a metal cabinet with the doors closed.
4. *MARKED DECOY* Two Slim-Jim sausages (removed from their wrappers and stored with their wrappers in an unsealed plastic bag) and a new tennis ball were hidden in a covered metal electric fryer, which was marked with a piece of red construction paper taped to the outside of the fryer. To minimize the possibility that decoy scents in *UNMARKED DECOY* and *MARKED DECOY* were not equally detectable and to encourage dog interest in the decoy scents, the sausages were rubbed along the outside of the cabinet (*UNMARKED DECOY*) and the electric fryer (*MARKED DECOY*).

Search conditions were four rooms within a church that had not previously been used for detection dog training purposes. Each room was approximately 30–40 m² and contained cabinets, tables and chairs and art supplies. Each condition was identified only as A, B, C or D, indicated by a paper taped on the outside of the door of each room. The experimenter did not touch any items around the rooms, except to place the decoy scents and/or paper markers. To avoid contamination of paper markers with decoy scents, paper markers were placed prior to placement of decoy scents. In order to maintain the belief that the experimenter was setting out target scents in each condition, at the beginning of each testing day, the experimenter carried a metal box containing 12 half-ounce samples of marijuana triple bagged in sealed plastic bags, and a canvas bag containing 12 half-ounce samples of gunpowder triple bagged in sealed plastic bags. Upon entering each condition, the experimenter immediately set these containers down by the door. The experimenter did not handle the scents, and the containers were never opened inside the church. Decoy scents and paper markers were never in contact with these containers and were kept in a separate briefcase carried by the experimenter.

Dog/handler teams completed two searches (maximum 5 min each) in each of the four search areas, for a total of eight trials ("runs") per team. Handlers were provided with a small card containing their assigned sequences of their eight runs, randomly counterbalanced across participants and search areas. Additional written and verbal instructions were provided to handlers that each condition might

contain up to three target scents and that target scent markers consisting of a red piece of construction paper would be present in two conditions. No information was provided about the decoy scent.

Each condition had a single observer present. Prior to each search, handlers would indicate to the observer whether their dog was a drug or explosives dog and whether their dog issued a passive or active alert. When a handler “called an alert,” that is, confirmed that the dog had found a target scent location and was issuing its trained operant response, the observer would record time of alert and alert location specified by the handler. In marked conditions, if handlers called alerts on the location marked by the paper, observers would record an M to reflect this. Observers recorded alerts as called by handlers and did not evaluate validity of alerts. The same rooms were used for both days of testing. Decoy scents and markers were removed at the end of the first day of testing, and identical but previously unused decoy scents and markers were used for the second day of testing.

This study was double-blind. Neither handler/dog teams nor observers were aware of the conditions of each search area. Because the study was completed across 2 days and we did not want to jeopardize the double-blind nature of this study, all handlers were debriefed and told about the contents of each condition upon the completion of the second day of testing. The experimenter (L. Lit) was the only person present who was aware of the conditions of each search area.

Dependent variables were total number of alerts issued by each dog as reported by handlers in each search area. The correct score for each search area was 0. All alerts were false alerts.

The Institutional Review Board and Animal Care and Use Committee at the University of California at Davis approved this study, and all participants provided written consent.

Statistical analyses

Data were analyzed using SPSS Version 17.0.1. All analyses used a significance threshold of $\alpha < 0.05$ (two-tailed). An omnibus mixed ANOVA was conducted to evaluate effects of day of testing (between groups) and condition (repeated measures) on number of alerts. To evaluate effects of handler influence and dog influence, data were also analyzed as a repeated measures 2×2 ANOVA [handler influence (yes/no) and dog influence (yes/no)]. Paired t tests were used to compare alerts between first and second runs of each condition. A chi-squared goodness of fit test compared clean runs (runs with no alerts) in unmarked and marked conditions. Within the MARKED NULL, UNMARKED DECOY and MARKED DECOY

conditions, a log likelihood analysis was used to compare runs for which (1) alerts included either a marker or the unmarked decoy scent, (2) alerts did not include the marker or unmarked decoy scent and (3) no alerts were issued, followed by chi-squared goodness of fit tests to compare distribution of these within conditions.

Results

In order to evaluate effects of handler beliefs and expectation on detection dog performance, this study measured performance of 18 handler/dog teams in four separate search areas (NULL, MARKED NULL, UNMARKED DECOY, MARKED DECOY, described in “Materials and methods”). Each team ran each search area twice, for a total of 36 runs per condition (2 runs/team \times 18 teams) and an overall total of 144 separate runs (4 search areas \times 2 runs/team/area \times 18 teams) (Fig. 1).

Day of testing and condition group differences

Overall, because multiple alerts per team within a condition were possible, there were a total of 225 alerts issued. There were 21 (15%) clean runs and 123 (85%) runs with one or more alerts. The omnibus mixed ANOVA using the model “number of alerts = day of testing (between groups) + condition (within-subjects) + [day of testing \times condition]” revealed no difference in mean alerts between teams running on the first and second days, $F(1, 16) = 0.94$, $P = 0.35$; no

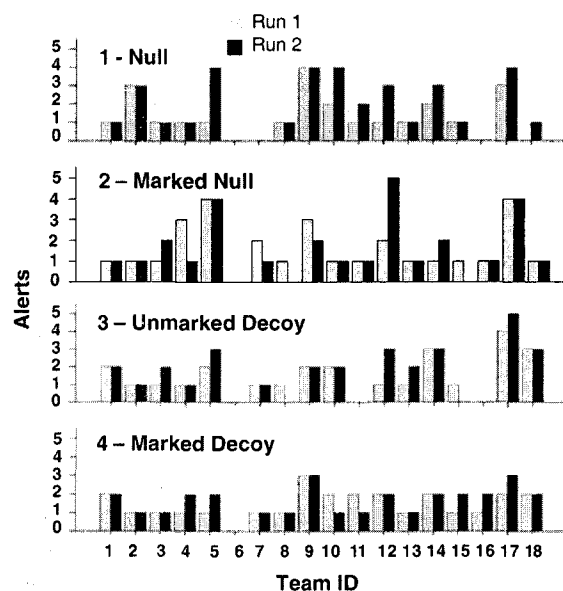


Fig. 1 Alerts for each team across each condition for Run 1 (light bars; $n = 18$ /condition) and Run 2 (dark bars; $n = 18$ /condition)

difference in mean alerts across conditions, $F(3,48) = 0.09$, $P = 0.97$; and no interaction, $F(3, 48) = 0.63$, $P = 0.60$. Data from both days were subsequently combined for further analysis. The repeated measures 2×2 factorial ANOVA found no main effect of human influence, $F(1, 17) = 0.06$, $P = 0.81$; no main effect of dog influence, $F(1, 17) = 0.01$, $P = 0.93$; and no interactions between human influence and dog influence, $F(1, 17) = 0.01$, $P = 0.94$.

First and second run differences

Within each condition, there was no difference in mean alerts between the first and second runs, except for NULL, where there were more alerts on the second run compared with the first run (paired $t[17] = -2.83$, $P = 0.01$).

Effect of marker on clean runs

Distribution of clean runs differed across unmarked and marked areas. There were more clean runs in unmarked areas (NULL and UNMARKED DECOY combined) ($n = 15$) than in marked areas (MARKED NULL and MARKED DECOY combined) ($n = 6$), $X^2[1, 21] = 3.86$, $P = 0.05$. In contrast, distribution of clean runs was not different across runs with and without decoy scent (NULL and MARKED NULL combined, $n = 11$, compared with UNMARKED DECOY and MARKED DECOY combined, $n = 10$), $X^2[1, 21] = 0.05$, $P = 0.827$.

Human and dog influences on alert locations

Alert locations in conditions marked with paper (MARKED NULL), containing decoy scent (UNMARKED DECOY) and containing decoy scent marked with paper (MARKED DECOY) were compared to evaluate differences of human influence on handler beliefs and dog influence on handler beliefs. Runs were grouped according to whether any one of the alerts in that run (1) included the marker and/or decoy scent; (2) did not include the marker and/or decoy scent; or (3) the run was clean (no alerts). These groups were dependent on condition, log likelihood $[4, 108] = 22.236$, $P < 0.001$, $\Phi = 0.41$ (Fig. 2). There were significantly more runs including alerts on the marker than either clean runs or runs not including alerts on the marker in both MARKED NULL ($X^2[1, 36] = 21.78$, $P < 0.001$) and MARKED DECOY ($X^2[2, 36] = 36.5$, $P < 0.001$) (Fig. 2). This was different than UNMARKED DECOY, where there were no differences between clean runs, runs with alerts on the decoy scent and runs not including alerts on the decoy scent ($X^2[2, 36] = 4.67$, $P = 0.09$) (Fig. 2). Conversely, comparing across conditions (black bars, Fig. 2), there were more runs with alerts on marked locations in MARKED NULL and MARKED DECOY than UNMARKED

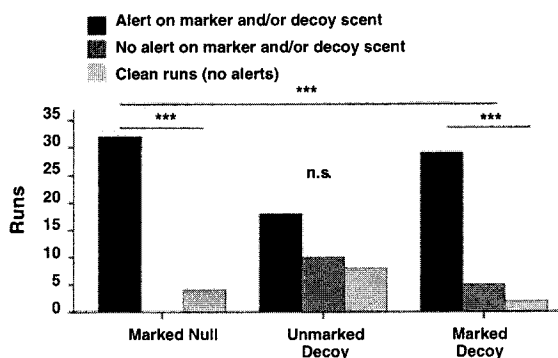


Fig. 2 Runs within each condition (combined $n = 36$) with alerts including marker and/or decoy scent (black bars), not including marker and/or decoy scent (dark gray bars), or clean runs (light gray bars). Asterisks represent statistically significant differences between groups as shown by log likelihood (across all conditions) and chi-squared test (within conditions); *** $P < 0.001$; n.s. not significant

DECOY, although the differences were not significant when corrected for multiple comparisons (Fig. 2).

Trend analysis

Finally, counterbalancing run order across participants ensured that each participant ran conditions in a different order. To evaluate whether there was an effect of sequence order of runs on alerts, all runs were reordered to reflect the sequence in which participants completed the conditions. Trend analysis was performed relating condition order to the number of alerts per run. An analysis of the cubic component of trend was significant, $F(1, 17) = 7.67$, $P = 0.01$, $\eta_p^2 = 0.31$, indicating that this trend accounted for over one-third of the variance in number of alerts per run (Fig. 3, solid line). This trend was consistent across both days of testing (Fig. 3, dotted and dashed lines).

Discussion

The goals of this study were to (1) identify whether handler beliefs affect detection handler/dog team performance and (2) evaluate relative importance of dog versus human inputs on those beliefs. To test this, we influenced handler beliefs and evaluated subsequent handler/dog team performance according to handler-identified alerts. The overwhelming number of incorrect alerts identified across conditions confirms that handler beliefs affect performance. Further, the directed pattern of alerts in conditions containing a marker compared with the pattern of alerts in the condition with unmarked decoy scent suggests that human influence on handler beliefs affects alerts to a greater degree than dog influence on handler beliefs. That

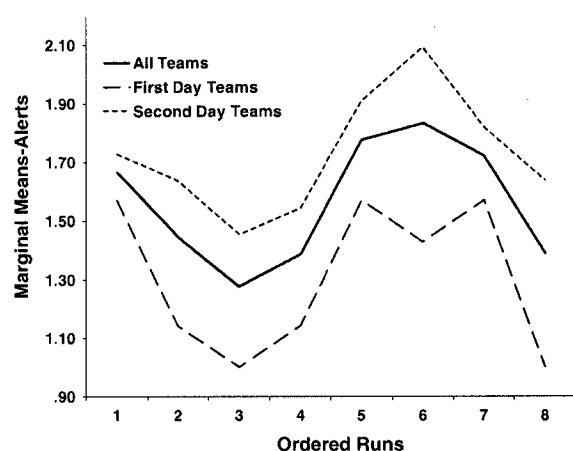


Fig. 3 Cubic trend for all teams (solid black line, $n = 18$) relating condition run order (ordered runs) to marginal means of alerts per run as shown by trend analysis, $P = 0.01$, $\eta_p^2 = 0.31$. Trends for teams from first day (dashed line, $n = 7$) and second day (dotted line, $n = 11$) are also shown for comparative purposes

is, total number of alerts identified by handlers did not differ across conditions. However, distribution of these alerts did differ across conditions; more alerts were identified on target locations indicated by human suggestion (paper marker) than on locations indicated by increased dog interest (hidden sausage and tennis balls).

In light of written and verbalized instructions that “Each scenario may contain up to 3 of your target scents,” it was interesting that there were 12 runs with either four or five alerts (Fig. 1). It was unclear whether handlers did not attend to the instructions, did not remember the instructions or believed that there were more than three target scent sources in each condition.

There are two possible explanations for the large number of false alerts identified by handlers. Either (1) handlers were erroneously calling alerts on locations at which they believed target scent was located or (2) handler belief that scent was present affected their dogs’ alerting behavior so that dogs were alerting at locations indicated by handlers (that is, the Clever Hans effect).

In the event that handlers were indeed asserting dog alerts regardless of dog response (or lack thereof), there are two possible causes. The handlers’ beliefs that scent was present may have been sufficient motivation to identify alerts even when the handlers were clearly aware that the dog had not provided the trained alert response behavior. Alternatively, the handlers’ beliefs were sufficient to generate a form of confabulation. Broadly defined, confabulation refers to false beliefs that may be unrelated to actual experienced events (Bortolotti and Cox 2009). Information regarding prevalent events (events that are common and therefore of increased likelihood) makes events more self-relevant and increases

beliefs in occurrence of such events (van Golde et al. 2010). Thus, the perceived likelihood that scent was present across conditions would have contributed to confidence in handler beliefs of scent and dog responses. Because other-generated suggestions influence beliefs and subsequent actions more strongly than self-generated suggestions (Pezdek et al. 2009), the experimenter-provided suggestion that target scent was present may have further contributed to this effect. However, the conclusion that handlers are asserting their dogs have alerted simply upon seeing the marked areas regardless of actual dog response does not account for the numerous additional alerts occurring in other areas. In addition, the experimenter was informed that three handlers admitted to overtly cueing their dogs to alert at the marked locations, suggesting that handlers would not call alerts unless and until they observe the dogs’ trained responses. Handlers are trained to recognize and reward specific behaviors of their dogs. The exhibition of an alert is an obvious and discrete behavior. Although data describing observer assessments were not collected, all observers were familiar with detection dog training and performance, and all observers were visibly surprised upon debrief (L. Lit, personal communication). Therefore, it is unlikely, although cannot be absolutely confirmed, that handlers called alerts on markers without seeing an appropriate behavior from the dog.

It may be more parsimonious to suggest that dogs respond not only to scent, but to additional cues issued by handlers as well. This is especially plausible since, in training, alerts are originally elicited through overt handler cueing. Cueing in initial training may include overt cues, verbal commands and physical prompting. Cues may also include more subtle unintentional cues given by handlers such as differences in handler proximity to the dog according to scent location, gaze and gesture cues, and postural cues.

Human cues that direct dog responses without formal training include pointing, nodding, head turning and gazing (reviewed in Reid 2009). While formal obedience training can enhance dogs’ use of human cues (McKinley and Sambrook 2000), type of training can differentially affect dogs’ human-directed communicative behaviors (Marshall-Pescini et al. 2009, 2008). Gazit et al. (2005) found diminished response when an area searched repeatedly was lacking target scent. While the proposed reason for their findings emphasized effects of context specificity on the detection dogs (Gazit et al. 2005), the current findings raise the possibility that at least some of the effects of Gazit et al. (2005) might have arisen due to handler beliefs that scent would not be present in that area, with subsequent attenuation of dog response.

Because the current study did not include videotape of handler/dog team performance, there is no way to identify

Table 2 Alert locations and alert frequencies (#) in each location for all scenarios

NULL		MARKED NULL		UNMARKED DECOY		MARKED DECOY	
Alert location	#	Alert location	#	Alert location	#	Alert location	#
Air conditioner	11	MARKER	32	DECOY SCENT	18	MARKER	29
First-aid kit	10	Easel	9	Piano	15	Clear bin	12
Wall heater	9	Tall cabinet	6	Wall heater	7	Oven	3
Right window	7	Cart	3	Red bag	6	Tool box	3
Tall cabinet	5	Chalkboard	3	Radiator	5	Gray tote	2
Desk	4	Blinds	1	Upholstered chair	3	Above boxes	1
Short cabinet	4	Desk chair	1	Shelf	1	Back table	1
Trash can	4	Pedestal	1	Table	1	Doorway	1
Map on chalkboard	1	Trash can	1			Painted box	1
Pencil sharpener	1					Paint container	1
Table	1					Trash can	1
Totals	57		57		56		55

which conclusion would be appropriate. Observer coding of dog behavior was not likely to improve the reliability of the data acquired because the double-blind study design had the potential for the observers to be subject to the same biases as the handlers. In fact, it is possible that the observers were subject to greater biases than the handlers, since they were able to observe every dog twice. Therefore, observer coding would have been subject to the same possible explanations as the handlers, and further subject to question according to level of observer experience with working dogs. Future studies should directly explore underlying factors responsible for the false alerts as this will improve development of effective remedies to optimize performance.

Dogs can learn to respond to human gestures very rapidly (Bentosela et al. 2008; Elgier et al. 2009; Udell et al. 2008). Thus, it is tempting to speculate that the large number of false alerts resulted from reinforcement of dogs for false alerts received in earlier conditions. However, the pattern of alerts, consistent across days of testing (Fig. 3), suggests that alerts did not reflect a simple learning effect. This is supported by prior studies of human–dog social cognitive interactions demonstrating no clear learning effect when comparing early with later trials (Hare et al. 2002; Riedel et al. 2008).

When considering alternative explanations for the incorrect responses, it is further possible that some alerts resulted from target scent contamination during initial setup of conditions. This is unlikely, given the emphasis of alerts toward marked sites, particularly when considering that the pattern of alerts was modified by human influence. The array of alert locations (Table 2) also does not support this explanation, notably because no dogs alerted on or around the doors where the scent containers had briefly been placed. Moreover, detection dogs are trained to

identify scent source rather than scattered residual scent. For example, dogs trained to alert on gunpowder are not expected to alert in an airport area simply because an armed officer passes through. The significant trend (Fig. 3) further suggests that a temporal component contributed to the number of alerts under these experiments.

It is possible, although also unlikely, that all objects in the room smelled like the dogs' target scents. Because these were rooms in a church building that had not previously been used for detection dog training, it was also unlikely that there were explosives or drugs that had been stored within the testing rooms. Some handlers suggested the possibility that dogs were following previous dogs and alerting at locations in which these dogs had salivated or otherwise left trace evidence of their presence. This would not explain the difference in patterns of alerts between marked and unmarked conditions or the variation in alert locations across all conditions. This would also be unlikely given the extensive training and certification processes required of these teams.

It is important to emphasize that this study did not evaluate performance of dogs when presented with scent. Handler–dog teams undergo substantial training and rigorous certification prior to deployment; all teams included in this study confirmed prior successful finds during active deployment. This study only considered number of alerts under the artificially manipulated condition of handler belief of scent when in fact no scent was present.

In conclusion, these findings confirm that handler beliefs affect working dog outcomes, and human indication of scent location affects distribution of alerts more than dog interest in a particular location. These findings emphasize the importance of understanding both human and human–dog social cognitive factors in applied situations.

Acknowledgments We would like to acknowledge the handlers and their dogs who agreed to participate in this research and observers who helped in the data collection process. This work was supported by an Autism Researcher Training Program fellowship (LL, T32 MH073124) and a private contribution.

Open Access This article is distributed under the terms of the Creative Commons Attribution Noncommercial License which permits any noncommercial use, distribution, and reproduction in any medium, provided the original author(s) and source are credited.

References

- Bentosela M, Barrera G, Jakovcevic A, Elgier AM, Mustaca AE (2008) Effect of reinforcement, reinforcer omission and extinction on a communicative response in domestic dogs (*Canis familiaris*). *Behav Processes* 78:464–469
- Bortolotti L, Cox RE (2009) 'Faultless' ignorance: strengths and limitations of epistemic definitions of confabulation. *Conscious Cogn* 18:952–965
- Elgier AM, Jakovcevic A, Barrera G, Mustaca AE, Bentosela M (2009) Communication between domestic dogs (*Canis familiaris*) and humans: dogs are good learners. *Behav Processes* 81:402–408
- Erdohegyi Á, Topál J, Virányi Z, Miklósi Á (2007) Dog-logic: inferential reasoning in a two-way choice task and its restricted use. *Anim Behav* 74:725–737
- Fukuzawa M, Mills DS, Cooper JJ (2005) More than just a word: non-semantic command variables affect obedience in the domestic dog (*Canis familiaris*). *Appl Anim Behav Sci* 91:129–141
- Gazit I, Goldblatt A, Terkel J (2005) The role of context specificity in learning: the effects of training context on explosives detection in dogs. *Anim Cogn* 8:143–150
- Hare B, Brown M, Williamson C, Tomasello M (2002) The domestication of social cognition in dogs. *Science* 298:1634–1636
- Horvath G, Jarverud GA, Jarverud S, Horvath I (2008) Human ovarian carcinomas detected by specific odor. *Integr Cancer Ther* 7:76–80
- Kotrschal K, Schoberl I, Bauer B, Thibeaut AM, Wedl M (2009) Dyadic relationships and operational performance of male and female owners and their male dogs. *Behav Processes* 81:383–391
- Lit L (2009) Evaluating learning tasks commonly applied in detection dog training. In: Helton W (ed) *Canine ergonomics: the science of working dogs*. CRC Press, Boca Raton
- Lit L, Crawford CA (2006) Effects of training paradigms on search dog performance. *Appl Anim Behav Sci* 98:277–292
- Marshall-Pescini S, Valsecchi P, Petak I, Accorsi PA, Previde EP (2008) Does training make you smarter? The effects of training on dogs' performance (*Canis familiaris*) in a problem solving task. *Behav Processes* 78:449–454
- Marshall-Pescini S, Passalacqua C, Barnard S, Valsecchi P, Prato-Previde E (2009) Agility and search and rescue training differently affects pet dogs' behaviour in socio-cognitive tasks. *Behav Processes* 81:416–422
- McCulloch M, Jezierski T, Broffman M, Hubbard A, Turner K, Janeki T (2006) Diagnostic accuracy of canine scent detection in early- and late-stage lung and breast cancers. *Integr Cancer Ther* 5:30–39
- McKinley J, Sambrook TD (2000) Use of human-given cues by domestic dogs (*Canis familiaris*) and horses (*Equus caballus*). *Anim Cogn* 3:13–22
- Miklósi A, Topál J, Csányi V (2007) Big thoughts in small brains? Dogs as a model for understanding human social cognition. *Neuroreport* 18:467–471
- Oesterhelweg L, Krober S, Rottmann K, Willhoft J, Braun C, Thies N, Puschel K, Silkenath J, Gehl A (2008) Cadaver dogs—a study on detection of contaminated carpet squares. *Forensic Sci Int* 174:35–39
- Pezdek K, Lam ST, Sperry K (2009) Forced confabulation more strongly influences event memory if suggestions are other-generated than self-generated. *Leg Criminol Psychol* 14:241–252
- Pfungst O (1911) *Clever Hans (The horse of Mr. von Osten): a contribution to experimental animal and human psychology* (C. L. Rahn, Trans.). Henry Holt, New York
- Prato-Previde E, Marshall-Pescini S, Valsecchi P (2008) Is your choice my choice? The owners' effect on pet dogs' (*Canis lupus familiaris*) performance in a food choice task. *Anim Cogn* 11:167–174
- Reid PJ (2009) Adapting to the human world: dogs' responsiveness to our social cues. *Behav Processes* 80:325–333
- Riedel J, Schumann K, Kaminski J, Call J, Tomasello M (2008) The early ontogeny of human-dog communication. *Anim Behav* 75:1003–1014
- Schwab C, Huber L (2006) Obey or not obey? Dogs (*Canis familiaris*) behave differently in response to attentional states of their owners. *J Comp Psychol* 120:169–175
- Soproni K, Miklósi A, Topál J, Csányi V (2001) Comprehension of human communicative signs in pet dogs (*Canis familiaris*). *J Comp Psychol* 115:122–126
- Szetei V, Miklósi Á, Topál J, Csányi V (2003) When dogs seem to lose their nose: an investigation on the use of visual and olfactory cues in communicative context between dog and owner. *Appl Anim Behav Sci* 83:141–152
- Topál J, Miklósi A, Csányi V (1997) Dog-human relationship affects problem solving behavior in the dog. *Anthrozoos* 10:214–224
- Udell MAR, Giglio RF, Wynne CDL (2008) Domestic dogs (*Canis familiaris*) use human gestures but not nonhuman tokens to find hidden food. *J Comp Psychol* 122:84–93
- van Golde C, Sharman SJ, Candel I (2010) High prevalence information from different sources affects the development of false beliefs. *Appl Cogn Psychol* 24:152–163
- Virányi Z, Topál J, Gacsi M, Miklósi A, Csányi V (2004) Dogs respond appropriately to cues of humans' attentional focus. *Behav Processes* 66:161–172
- Wasser SK, Davenport B, Ramage ER, Hunt KE, Parker M, Clarke C, Stenhouse G (2004) Scat detection dogs in wildlife research and management: application to grizzly and black bears in the Yellowhead Ecosystem, Alberta, Canada. *Can J Zool-Revue Canadienne De Zoologie* 82:475–492

128
HS
8/25
3'

NO. _____
FILED _____
280

AUG 22 2014

CHRISTOPHER D. NICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Joshua P. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
)	
vs.	)	STATE'S OBJECTION AND
	)	MEMORANDUM
LORI ELIZABETH LOVELY,	)	IN RESPONSE TO
	)	DEFENDANT'S MOTION
Defendant.	)	TO SUPPRESS
)	

COMES NOW, Joshua P. Haws, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and objects to the Defendant's Motion to Suppress and provides the following memorandum in response. The State expects that the following facts will be established through witness testimony.

FACTS

On April 1, 2014 at about 9:50 a.m. Boise Police officer Matt Walker (hereinafter "Walker") was dispatched to the Greyhound Bus Depot on Bannock street in Boise reference a narcotics concern. A Greyhound Bus company employee named Ward Eversull (hereinafter "Eversull") had called dispatch to request officer assistance. A few minutes before his call to police Eversull had been adjusting the luggage compartment of the bus that the Defendant, Lori Lovely (hereinafter "Lovely") had arrived in. Eversull called the police because he had located a bag that emitted a very strong odor of fresh marijuana. Despite having the contractual authority to search the bag himself, Eversull closed the door to the luggage compartment and waited for the police to arrive.

Walker, in turn, requested the assistance of a canine handling officer. Officer Randy Arthur (hereinafter "Arthur") arrived on the scene with his drug-detection canine, Rocky. Rocky is a trained, certified, and reliable drug-detection canine. Rocky is trained in the detection of the odors of marijuana, methamphetamine, heroin and cocaine. When Arthur arrived Eversull opened the baggage door in the underside storage compartment of the bus to allow access. Arthur asked whether the bag had been identified. Eversull pointed out Lovely's red full-sized suitcase that was lying on its back. Arthur was able to smell the odor of marijuana emanating from the bag.

Arthur took Rocky out of his patrol car and deployed Rocky to sniff in the storage compartment beginning in the rear wheels. Arthur followed his training and protocol in the deployment of Rocky during the sniff. Rocky alerted on Lovely's red suitcase. Arthur asked Walker to seize the suitcase and the officers and Eversull took the suitcase to an office inside of the Greyhound station to open and search it. Arthur used his Leatherman tool to break a zipper free from a small lock in order to open the suitcase. Inside of the suitcase the officers found several large bags of marijuana in clear plastic heat-sealed bags.

The officers asked Eversull to determine whether Lovely had checked any other bags. She had checked another large black suitcase and Eversull located it and took it off of the bus and to Arthur. Arthur could smell the same odor of marijuana emanating from the black suitcase. He opened it too and located many more of the same type of large plastic heat-sealed bags of marijuana. In all, over 40 pounds of marijuana was located between the two suitcases.

LEGAL ANALYSIS

Officer Arthur had probable cause to conduct a reasonable warrantless search of Lovely's luggage pursuant to the established automobile exception to the Fourth Amendment.

The Fourth Amendment requires that all searches and seizures be reasonable. State v. Murphy, 129 Idaho 861, 863, 934 P.2d 34, 36 (Ct.App.1997). Warrantless searches and seizures are unreasonable, *per se*, unless they fall within one of the well-recognized exceptions to the warrant requirement. California v. Acevedo, 500 U.S. 565, 580, 111 S.Ct. 1982, 1991, 114 L.Ed.2d 619, 634 (1991); State v. Henderson, 114 Idaho 293, 295, 756 P.2d 1057, 1059 (1988). The "automobile exception" is one of these well-recognized exceptions.

Under the automobile exception law enforcement officers may search an automobile and all of its containers when there is probable cause to believe that the automobile holds contraband or evidence of a crime. State v. Gallegos, 120 Idaho 894, 898, 821 P.2d 949, 953 (1991); State v. Ramirez, 121 Idaho 319, 323, 824 P.2d 894, 898 (Ct.App.1991). The exception is based upon the automobile's ready mobility and a less significant expectation of privacy in a vehicle as compared to an expectation of privacy in a home. State v. Braendle, 134 Idaho 173, 175, 997 P.2d 634, 636 (Ct.App.2000). The scope of a warrantless automobile search "is defined by the object of the search and the places in which there is probable cause to believe it will be found." United States v. Ross, 456 U.S.

STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS (LOVELY),

798, 824, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572, 593 (1982), quoted in Braendle, 134 Idaho at 175, 997 P.2d at 636.

Lovely cites Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586 (1979), however, this case was displaced and discarded as legal authority by United States v. Ross, supra, and California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982 (1991) (holding, "despite the protection that Sanders purported to extend to closed containers, the privacy interest in those closed containers (in an automobile exception case) yield to the broad scope of an automobile search).

The smell of marijuana alone can satisfy the probable cause requirement for a warrantless search." State v. Gonzales, 117 Idaho 518, 519, 789 P.2d 206, 207 (Ct. App. 1990); See State v. Schmadeka, 136 Idaho 595, 600 (Ct. App. 2001) ("[T]he odor of burnt marijuana alone, when recognized by a person or canine qualified to recognize the odor, is . . . sufficient to establish probable cause for a warrantless search of the portion of the automobile associated with that odor.") When an officer, trained in detecting the odor of marijuana, smells such odor emanating from private property and the officer is lawfully located in the particular area the officer's actions are not considered a search. State v. Rigoulot, 123 Idaho 267, 846 P.2d 918 (Ct. App. 1992). Accordingly, the smell of marijuana supports an officer's probable cause to believe contraband or evidence of marijuana possession may be contained in the vehicle or containers within the vehicle.

Here, when Arthur arrived at the station, he met with the other officers and Eversull. Eversull opened the luggage storage compartment and showed the officers the red suitcase that he had found the marijuana odor that caused him to call the police. Arthur leaned in and smelled the odor of marijuana coming from the bag. Arthur, through his training and experience, immediately recognized the contraband of marijuana by the odor emanating from Lovely's luggage. Therefore, Officer Arthur had probable cause to believe that contraband, marijuana, was located in the suitcase.

Arthur also established probable cause by the use of his drug-detection canine. Under the plain smell doctrine, detection of controlled substances by scent is not a search, so long as the intrusion presented by the dog is limited and the dog is lawfully located in the area when the scent is detected. United States v. Place, 462 U.S. 696, 103 S.Ct. 2637 (1983)(“canine sniff” of luggage not a search). Here, Rocky was present on the property at the request, and with the permission of, Eversull, a Greyhound authorized contractor. Further, the alert of a reliable drug detection canine on the vehicle establishes probable cause to search the interior of the vehicle for controlled substances. State v. Braendle, 13 Idaho 173, 997 P.2d 634 (Ct.App. 2000); State v. Tucker, 132 Idaho 841, 979 P.2d 1199 (1999), State v. Gallegos, 120 Idaho 894, 821 P.2d 949 (1991); State v. Martinez, 129 Idaho 426, 925 (Ct.App.1996). A final response or specific trained behavior that indicates a dog has definitely detected drugs is not necessary to establish probable cause to search a vehicle. Martinez, at 432. A dog’s reactions, interpreted by an officer trained to read a dog’s responses, can indicate that a dog detected the odor of a controlled substance and provide probable cause to search a vehicle without a warrant. Id.

Here, Arthur deployed Rocky in order to confirm the existence of the odor of marijuana. Arthur did not just lead Rocky to the red suitcase but instead directed Rocky to sniff beginning in the rear wheel area. Rocky is trained to sit as an indication of a final response confirming the presence of a controlled substance. Arthur then ran Rocky from the rear wheels forward to the luggage compartment. As in Martinez, Rocky’s behavior changed when he reached the area of the luggage compartment that held Lovely’s luggage. Rocky’s sniffing increased; he jumped in the vehicle and even placed himself on top of Lovely’s luggage. He sniffed the first piece of luggage’s seams intensely. Rocky then stood in a crouched position on the bag. Unlike the drug dog in Martinez who did not give a final response, Rocky got up from the crouched position, jumped off the bag on

the ground below and gave a final response or "alert" by sitting. Rocky tried to indicate a final response on Lovely's luggage in the compartment itself by placing himself in a crouched position on top on luggage, but there was not enough room for him to sit properly. Accordingly, Officer Arthur, familiar with Rocky's behaviors through extensive training and experience, knew that Rocky had located a strong source containing the odor of a controlled substance.

Lovely argues that Rocky did not provide the trained alert required, making the alleged alert as observed by Officer Arthur unreliable. Lovely claims that Rocky did not make any either passive or aggressive alert. This is incorrect according to the record of Officer Arthur's testimony at preliminary hearing. Officer Arthur testified that, "His (Rocky's) trained response when he can is to actually get into a physical sit position." Arthur explained that when Rocky detects the odor of controlled substances, i.e., marijuana, his trained indication to his handler, Arthur, is a sit. In this case, Rocky jumped off of Lovely's luggage and immediately sat and started barking after. The bark, while not a trained response, was an obvious indication of an excited response. Therefore, in this case, the court should find that Arthur correctly deployed Rocky and that Rocky's alert established the requisite probable cause needed to search Lovely's luggage.

Rocky is a reliable drug detection canine who is certified and trained in accordance with the stringent requirements for canine teams deployed in the State of Idaho.

Arthur and Rocky are a canine team trained and certified in accordance with the mandatory certification requirements established by the IDAPA Rules governing Idaho police canine teams performing law enforcement duties in Idaho. In State v. Yeomans, 144 Idaho 871, 875, 172 P.3d 1146,1150 (2007) the court discussed the elements a trial court may consider when making determinations about the reliability of drug detection canine (quoting State v. Nguyen, 726 N.W.2d 871 (S.D.2007)). These elements include a dog's training and

certifications, successes and failures in the field, and the experience and training of the officer handling the dog. Id. The court must weigh these factors and determine whether the dog is reliable based on a totality of the circumstances.

Notably, the court in Yeomans pointed out that Florida is the only jurisdiction found that will preclude a finding of probable cause based on evidence that a drug dog could alert to residual odors. Id. at n.1 (citing Matheson v. State, 870 So.2d. 8 (Fla.Dist.Ct.App.2003)). It is evident that the court rejected this position by holding that such evidence did not preclude a finding of probable cause to search a vehicle in Yeomans. The defendant bases much of its argument regarding canine reliability on another non-binding and unpersuasive case from Florida, Harris v. State. 71 So.3d 756 (2011). The court in Harris relies heavily on the holding in Matheson v. State, the case already addressed by an Idaho court in Yeomans. Consideration and weight should not be given to Harris when Idaho courts previously have declined to follow the position taken by another, substantially similar, Florida case.

Further, the circumstances in this case are entirely distinguishable from the circumstances and facts in Harris. The Harris decision was largely based on the lack of uniform training and certification requirements in Florida. Id. at 759. Idaho has stringent, specific, and standardized drug detection canine team training and certification requirements that that each Idaho police canine team must satisfy in order to perform their duties. IDAPA 11.11.01.211-242. For example, each canine team is comprised of a specific person, who serves as the canine handler, and a specific canine, who are formally assigned to work together in the performance of law enforcement duties. IDAPA 11.11.01.212. The following requirements establish the uniform standards for Idaho canine teams: It is mandatory that canine teams must be Idaho-POST certified. IDAPA 11.11.01.213. Canine handlers must be a POST-certified officer and are required also required to complete one hundred sixty (160) hours of POST-approved canine handler training. IDAPA 11.11.01.213.

Additionally, canine teams must be evaluated for proficiency in controlled substance detection according to the POST council standards and demonstrate a one hundred percent (100%) pass rate on all portions of the evaluation. If the canine team fails any portion of the evaluation, the entire certification evaluation is deemed failed. Additionally, a canine team evaluator must be POST certified. IDAPA 11.11.01.213. Each evaluator, among numerous other requirements, must have three (3) years of canine handler experience, three hundred ninety (390) hours of POST-certified or federally approved canine-related training, and complete the POST-certified canine evaluator course.

A canine team certification is only valid for fifteen (15) months. A canine team must recertify prior to the expiration of their certification. Further, a canine team certification lapses if the handler and canine no longer work together. Drug detection canine teams are required to demonstrate an ability to detect substances in buildings, vehicles, containers, and exterior open areas. IDAPA 11.11.01.238. The certification test consists of a least four (4) rooms, four (4) vehicles, six (6) containers, and exterior open areas where the location of the hidden substances is unknown to the canine handler. A drug detection dog must locate two (2) finds each of marijuana and hashish, cocaine, heroin, opiate derivatives, and methamphetamine. IDAPA 11.11.01.240.

Lovely challenges Rocky's reliability. The State together with the filing of this brief is providing an addendum to discovery for the delivery of the certification of Rocky and Officer Arthur. The certification shows that Arthur and Rocky have met Idaho's stringent drug-detection dog certification requirements.

The police officers were permitted to search Lovely's luggage in the bus station's secured room.

Under the automobile exception, an officer may search a container found within a vehicle either immediately at the scene, or at a secure location after the

container is seized. Containers discovered in the course of a vehicle search are not subject to temporal restrictions not applicable to vehicle search itself. United States v. Johns, 469 U.S. 478, 485, 105 S. Ct. 881, 886, 83 L. Ed. 2d 890 (1985). Moreover, in United State v. Ross, the Court expressly refused to limit the application of the automobile exception by requiring police officers to secure a warrant before they searched containers found inside a lawfully stopped vehicle. United States v. Johns, 469 U.S. 478, 485, 105 S. Ct. 881, 886, 83 L. Ed. 2d 890 (1985). The State urges this court to find that the luggage was searched at the scene of the search. The search of the luggage occurred approximately twenty-five to thirty feet from where the vehicle was parked. The search was conducted mere minutes after the drug dog alerted. However, if this court finds that the luggage was not searched at the scene, Johns should be found analogous and controlling law.

In Johns, customs agents observed and approached two trucks suspected of drug trafficking activity. Upon their arrival, officers detected the odor of marijuana as they drew near the trucks. The odor was observed to be coming from packages located in the back of the vehicle which were wrapped in a manner customarily employed by drug smugglers. The agents took the vehicle and packages to a secure location and searched the packages without a warrant. The Court held the agents had probable cause to search the entire vehicle based upon the automobile exception, and the agents were not required to conduct a search of the packages contemporaneous with the their seizure. Id. At 484, 885. The Court reasoned, "the justification to conduct such a warrantless search does not vanish once the car has been immobilized." Moreover, Johns held that to rule otherwise "fails to further the privacy interests protected by the Fourth Amendment." Id. The effect of holding otherwise would only "require police officers to search all containers discovered within a vehicle immediately and would result in delaying the person(s) whose property is search." Id. Additionally, the Court held, "where police officers are entitled to seize the container and continue to have probable

cause to believe that it contains contraband, we do not think that the delay in execution of the warrantless search is necessarily unreasonable.” The reasoning utilized by the Court in Johns is applicable in this case.

Here, Lovely was a passenger in a vehicle carrying numerous other passengers all carrying multiple containers: luggage. The officers, similar to the agents in Johns, obtained probable cause, through either Rocky’s alert or Officer Arthur’s trained detection of the odor of marijuana emanating from the luggage, to believe the vehicle contained controlled substances, specifically Lovely’s luggage. Officer Arthur, similar to the agents in Johns, smelled the odor of marijuana coming from luggage. Here, rather than impounding the entire vehicle, which could have been done pursuant to the automobile exception, the officers simply impounded the most apparent containers carrying contraband. Notably, the contraband was additionally, unlike Johns, detected by Rocky. Further, the search conducted in Johns was done approximately three days later at a Drug Enforcement Agency warehouse. Id. at 481, 884. Here, the officers simply removed the heavy luggage from the vehicle, carried it approximately twenty-five to thirty feet away into a secure room and searched it. This court should find that the search was permissible under the reasoning of Johns.

CONCLUSION

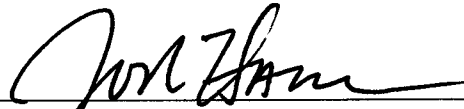
Lovely’s motion to suppress should be DENIED. The search of Lovely’s luggage was supported by probable cause based on the canine alert and Officer Arthur’s detection of the odor of marijuana. The police officers were lawfully on the premise when they developed probable cause and Lovely’s luggage was within a readily mobile vehicle. The officers removed the luggage from the vehicle and placed it 25-30 feet away from the vehicle where it was searched.

The State, for the foregoing reasons, respectfully requests this Court **DENY** the Defendant’s motion to suppress.

RESPECTFULLY SUBMITTED this 22nd day of August, 2014.

GREG H. BOWER

Ada County Prosecuting Attorney

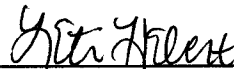


Joshua P. Haws

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of ~~March~~^{August} 2014, I served a true and correct copy of the foregoing STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS to ^{Kimberly Simmons} Ransom Bailey, Ada County Public Defender's Office, by depositing same in the Interdepartmental mail.



Legal Assistant

280

AUG 22 2014

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN

GREG H. BOWER
Ada County Prosecuting Attorney

R. Scott Bandy
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

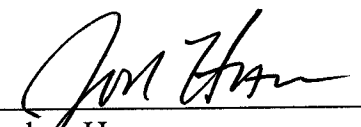
THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
LORI ELIZABETH LOVELY,)
)
Defendant.)
)
_____)

Case No. CR-FE-2014-0004550

**ADDENDUM TO
DISCOVERY RESPONSE
TO COURT**

COMES NOW, Joshua Haws, Deputy Prosecuting Attorney in and for Ada County,
State of Idaho, and informs the Court that the State has submitted an Addendum to
Response to Discovery.

RESPECTFULLY SUBMITTED this 22nd day of August, 2014.



Joshua Haws
Deputy Prosecuting Attorney

Time	Speaker	Note
3:17:15 PM		St. v. Lori Lovely CRFE14-4550 Motion to Suppress Cust
3:17:19 PM	Judge	calls case, def present in custody with PD Kimberly Simmons
3:17:32 PM	State	Joshua Haws
3:17:47 PM	PD	Kimberly Simmons
3:17:51 PM	Judge	time of for Motion to Suppress
3:18:00 PM	State	preliminary matters
3:18:41 PM	State	calls first witness
3:19:19 PM	Witness	Sworn
3:19:24 PM	State	Direct exam
3:23:26 PM		take a look at St ex 3
3:23:31 PM	Witness	identifies St ex 3
3:24:18 PM	State	move to Admit St ex 3
3:24:26 PM	PD	requests to view again
3:24:42 PM		not object
3:24:54 PM	Judge	general depiction of bus, not specific bus
3:25:05 PM		admitted for that limited purpose
3:26:21 PM	Witness	smelled like pot, it's a sealed compartment
3:26:36 PM		identified as marijuana
3:26:43 PM	State	show 1, 2, 4 and 5
3:26:52 PM	Witness	identifies; signs in Greyhound Boise and; standard signs
3:27:29 PM		disclaimers with tickets; ticket envelope
3:28:41 PM		reads into record
3:29:52 PM		officers showed up
3:30:50 PM		opened it for first officers, closed back and waited for K-9
3:31:12 PM		didn't touch it
3:31:21 PM		zippers closed and had little padlocks on them
3:32:32 PM		no bags on top, beside it, yes
3:33:54 PM		saw bags of marijuana
3:34:15 PM		didn't count quantity
3:34:27 PM		looked at bag tag to identify owner
3:34:51 PM		police looked for other bag, tag said 1 of 2, knew there was another bag
3:35:52 PM		she was out wandering around
3:37:09 PM	State	move to admit 1, 2, 4, and 5
3:37:22 PM	PD	no objection, if for same purposes as ex 3
3:37:33 PM	Judge	1, 2,4, and 5 are admitted for limited
3:37:58 PM	PD	Cross exam
3:40:32 PM	State	no redirect
3:40:36 PM	State	calls next witness

<u>3:41:04 PM</u>	Witness	Sworn
<u>3:41:23 PM</u>	State	Direct exam
<u>3:42:20 PM</u>	Witness	experience
<u>3:42:32 PM</u>		responded to narcotics call
<u>3:43:09 PM</u>		called for K-9 handler after arriving
<u>3:44:41 PM</u>		sent out an officer to locate owner of bags
<u>3:45:06 PM</u>	PD	no cross
<u>3:45:13 PM</u>	State	calls next witness
<u>3:45:43 PM</u>	Witness	Sworn
<u>3:46:01 PM</u>	State	Direct exam
<u>3:46:14 PM</u>	Witness	Officer Arthur, K-9 handler, work training and experience
<u>3:48:14 PM</u>		Rocky's training as a drug detection dog
<u>3:49:23 PM</u>		certified as a team
<u>3:50:27 PM</u>		explains an alert
<u>3:54:50 PM</u>		he opened the compartment
<u>3:54:56 PM</u>		didn't smell anything immediately, was 5 or 6 feet away
<u>3:55:25 PM</u>		asked about which bag he thought had the odor
<u>3:55:50 PM</u>		he pointed out a red canvas suitcase
<u>3:56:10 PM</u>		bent in and sniffed the bag, identified odor of marijuana
<u>3:57:23 PM</u>		trained in the odor of marijuana
<u>3:57:33 PM</u>		got Rocky out
<u>3:57:46 PM</u>		didn't move the bag
<u>3:58:13 PM</u>		took Rocky out and started at rear set of wheels
<u>4:00:06 PM</u>		how Rocky identified bag
<u>4:03:00 PM</u>		we hadn't located her yet
<u>4:03:05 PM</u>		then another bag located
<u>4:05:06 PM</u>	PD	Cross exam
<u>4:05:15 PM</u>		type of dog
<u>4:06:47 PM</u>		pass/fail test
<u>4:09:25 PM</u>		where dogs are purchased from
<u>4:18:43 PM</u>	Judge	question for officer
<u>4:18:54 PM</u>	State	no more witnesses
<u>4:19:06 PM</u>	PD	requests break
<u>4:19:16 PM</u>	Judge	back on record
<u>4:23:20 PM</u>	PD	argues for motion to suppress and statements
<u>4:27:26 PM</u>	Judge	was dog given the opportunity
<u>4:29:56 PM</u>	Judge	why isn't officer smelling of marijuana; probable cause
<u>4:31:12 PM</u>	Judge	hypothetical
<u>4:31:32 PM</u>		just taking it away from the automobile
<u>4:31:40 PM</u>	PD	argue that warrant would apply
<u>4:32:12 PM</u>	Judge	comments; cites case, that officers don't have to wait for warrant

<u>4:32:51 PM</u>	PD	would have to familiarize myself with that casey
<u>4:33:14 PM</u>		cites other case, luggage protected under 4th amendment
<u>4:33:27 PM</u>	Judge	if probable cause, they can't search luggage without warrant
<u>4:33:47 PM</u>	PD	factually different
<u>4:34:10 PM</u>	Judge	privacy interest with bag; post 9/11
<u>4:34:59 PM</u>	PD	that's a large philosophical questions; response, not in this case
<u>4:35:16 PM</u>		talking about an odor of marijuana
<u>4:35:43 PM</u>	Judge	looking at probable cause, and a person who has control over what's on the property
<u>4:36:15 PM</u>	PD	they'd still need a warrant; they'd already seized the bag; don't see why they couldn't get a warrant; more that they should have gotten a warrant
<u>4:36:51 PM</u>	Judge	reads
<u>4:37:30 PM</u>		the greyhound agent smelling marijuana, calls officers, they smell it also
<u>4:38:45 PM</u>	Judge	point would be correct under old Sanders case
<u>4:39:48 PM</u>	PD	automobile exception
<u>4:40:47 PM</u>	State	makes argument against suppression
<u>4:45:42 PM</u>		she had her miranda rights read
<u>4:46:06 PM</u>		believe it's a correct search and seizure
<u>4:46:19 PM</u>	PD	testimony of the black bag; nothing further
<u>4:46:49 PM</u>	Judge	set for a status tomorrow
<u>4:47:04 PM</u>		will give a ruling tomorrow
<u>4:47:41 PM</u>		end of case

Time	Speaker	Note	Status
<u>4:04:03 PM</u>		St. v. Lori Lovely Cust	CRFE14-4550
<u>4:04:07 PM</u>	Judge	calls case, def present in custody	
<u>4:04:14 PM</u>	State	Josh Haws	
<u>4:04:18 PM</u>	PD	Kimberly Simmons	
<u>4:07:05 PM</u>	State	we acknowledge a passenger has come privacy, but that motion to suppress be denied; reviewed cases cited	
<u>4:07:50 PM</u>	PD	automobile exception doesn't apply	
<u>4:08:13 PM</u>	Judge	why?	
<u>4:08:16 PM</u>	PD	response	
<u>4:08:57 PM</u>	Judge	need to make a record	
<u>4:09:09 PM</u>		findings on motion to suppress	
<u>4:29:08 PM</u>		motion to suppress is denied	
<u>4:30:18 PM</u>		end of case	

Time	Speaker	Note
<u>3:57:27 PM</u>		St. v. Lori Lovely CRFE14-4550 Pretrial Conference Cust
<u>3:57:30 PM</u>	Judge	calls case, def present in custody
<u>3:57:38 PM</u>	State	Josh Haws
<u>3:57:41 PM</u>	PD	Kimberly Simmons
<u>3:57:48 PM</u>	State	present for pretrial
<u>3:58:34 PM</u>	Judge	start 9/17 for trial at 9am
<u>4:00:31 PM</u>		1 or 2 alternates
<u>4:00:47 PM</u>		2 alternates then
<u>4:00:59 PM</u>	State	agree
<u>4:01:03 PM</u>	Judge	8 preemptories each
<u>4:01:20 PM</u>	State	thought case would resolve
<u>4:02:05 PM</u>	Judge	the calendar this week is light
<u>4:02:52 PM</u>	State	do have exhibit and witness list
<u>4:03:48 PM</u>	Judge	would think of additional security
<u>4:03:59 PM</u>		wouldn't go back to jury for deliberation, they could look at it another way
<u>4:04:13 PM</u>		technology?
<u>4:04:18 PM</u>	State	audio
<u>4:04:25 PM</u>	Judge	bring clean laptop
<u>4:05:00 PM</u>	Judge	sooner the better for technical glitches
<u>4:05:15 PM</u>	Judge	evidentiary?
<u>4:05:21 PM</u>	State	nothing
<u>4:05:24 PM</u>	PD	no
<u>4:05:41 PM</u>	Judge	have client sign acknowledge of settlement waiver
<u>4:06:22 PM</u>		will start on Wednesday then
<u>4:07:04 PM</u>		end of case

128
JT
9/11/14

NO. _____
FILED _____
A.M. _____ P.M. _____

SEP 11 2014

CHRISTOPHER D. RICH, Clerk
By KATHA CHRISTENSEN

GREG H. BOWER
Ada County Prosecuting Attorney

Joshua Haws
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

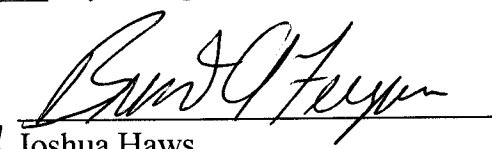
THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
LORI ELIZABETH LOVELY,)
)
Defendant.)
)
_____)

Case No. CR-FE-2014-0004550

**SECOND ADDENDUM TO
DISCOVERY RESPONSE
TO COURT**

COMES NOW, Joshua Haws, Deputy Prosecuting Attorney in and for Ada County,
State of Idaho, and informs the Court that the State has submitted a Second Addendum to
Response to Discovery.

RESPECTFULLY SUBMITTED this 11TH day of September, 2014.

for 
Joshua Haws
Deputy Prosecuting Attorney

✓

SEP 11 2014

CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Joshua Haws
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

STATE'S WITNESS LIST

COMES NOW, Joshua Haws, Deputy Prosecuting Attorney for the County of Ada,
State of Idaho, and intends to call the following witnesses in its case in chief:

State's Witness List in its Case in Chief

1. Officer Walker, Boise Police Department
2. Officer Arthur, Boise Police Department
3. Officer Zubizarreta, Boise Police Department
4. Detective Bruner, Boise Police Department
5. Officer Ryan, Boise Police Department
6. Sergeant Avella, Boise Police Department
7. Sergeant Harrington, Boise Police Department
8. Ward Leroy Eversull, Greyhound Bus
9. Mike LNU, c/o Ada County Prosecutor's Office

STATE'S WITNESS LIST (LOVELY), Page 1

000094


10. Kristy Hook, Ada County Sheriff's Office
11. Angie Wetherelt, ISP State Lab
12. Officer Dotson, Boise Police Department
13. Kerry Russell, c/o Idaho State Lab

All above witnesses were disclosed in the State's initial discovery response filed July 2, 2014.

WHEREFORE, the State hereby notifies the Court of the witnesses it will call in its case in chief.

RESPECTFULLY SUBMITTED this 2nd day of September 2014.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Joshua Haws
Deputy Prosecuting Attorney

SEP 11 2014

CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Joshua Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
)	
vs.	)	STATE'S EXHIBIT LIST
)	
LORI ELIZABETH LOVELY,)	
)	
Defendant.)	
_____)	

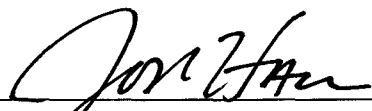
COMES NOW, THE STATE OF IDAHO, by and through the undersigned
Deputy Prosecuting Attorney, and submits its following exhibit list:

Exhibit No.	Description	Offered	Admitted	Date
	A. REAL EVIDENCE			
1.	Marijuana			
2.	Photographs			
3.	Audio/video interrogation			
4.				

5.				
6.				
7.				
8.				
9.				
10.				
11.				

DATED this 2nd day of September 2014.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Joshua Haws
Deputy Prosecuting Attorney

SEP 17 2014

CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

LORI LOVELY

Defendant.

Case No. CR-FE-2014-4550

ACKNOWLEDGEMENT OF OFFER OF
SETTLEMENT

The Defendant in this matter acknowledges that, should the State offer to settle this case by entry of a guilty plea to the charge(s), that the Defendant has the right to review any offers with his/her attorney.

The Defendant has the right to review any written offer made by the State and to accept or reject that offer in writing.

If the Defendant rejects any offer(s) and goes to trial and is found guilty of the charge(s), the State is not bound to request a sentence consistent with the rejected offer. The State may request a greater sentence.

By signing below, the Defendant acknowledges:

- 1) He/she has reviewed the State's written offer with his/her attorney;
- 2) He/she understands the offer;
- 3) That his/her attorney has answered any questions he/she had about the offer; and
- 4) ☐ That the Defendant REJECTS the State's offer;
☐ That no settlement offer was made by the State; or
☐ That the Defendant now wants to ACCEPT the State's offer.

Dated this 10 day of Sept, 2014.

Lori Lovely
Defendant

ELECTION OF PLEA AGREEMENT

000098

Time	Speaker	Note
8:56:27 AM		St. v. Lori Lovely CRFE14-4550 Jury Trial – Day 1
8:56:29 AM	Judge	calls case, def present in custody, jury not yet present
8:56:39 AM	State	Josh Haws
8:56:41 AM	PD	Kimberly Simmons
8:56:42 AM	Judge	parties stipulated to excusing juror #11
8:56:54 AM		he's a Boise City police department and under subpoena with other cases by state
8:57:17 AM	State	juror #2 has arrived late, prefer he be excused
8:58:16 AM	PD	agree
8:58:32 AM	Judge	#2 is excused then
9:11:01 AM	Judge	recall case, jury pool present, parties ready to proceed
9:12:01 AM	Clerk	roll call
9:14:35 AM	Judge	no challenges to panel
9:17:46 AM		jury instructions and information
9:21:45 AM	Clerk	Jury panel sworn
9:22:27 AM	Judge	Voir Dire
9:40:52 AM		juror # 8 excused
9:42:51 AM	State	Voir Dire
10:25:14 AM		pass panel for cause
10:25:21 AM	Judge	take a break, admonishes jury pool
10:38:12 AM	PD	Voir Dire
11:21:10 AM		pass jury for cause
11:21:16 AM	Judge	followup with juror #29
11:23:01 AM		peremptories
11:34:12 AM		request counsel to approach
11:34:49 AM	Judge	call numbers of those who've been selected
11:39:44 AM	Clerk	jury sworn
11:40:11 AM	Judge	preliminary jury instructions
12:01:12 PM		break
12:31:04 PM	State	talked with counsel about the marijuana
12:31:59 PM		the alternative option
12:32:26 PM	PD	know that it smells, concerned that everyone would smell it before it's admitted
12:33:42 PM		security concerns because of the amt
12:34:06 PM	Judge	question
12:34:34 PM	State	3 witnesses today that don't need the marijuana up here
12:35:12 PM		think that would complicate the chain of custody more
12:35:21 PM	Judge	you all think about it
12:35:29 PM	State	Mr. Guy will make opening statement
12:37:24 PM	Judge	jury present

<u>12:37:29 PM</u>	State	Opening Statement
<u>12:44:53 PM</u>	PD	reserve opening
<u>12:44:58 PM</u>	State	calls first witness
<u>12:46:45 PM</u>	Witness	Sworn
<u>12:46:49 PM</u>	State	Direct exam
<u>12:47:05 PM</u>	Witness	Ward Eversull, agent for Greyhound downtown Boise; work history
<u>12:49:23 PM</u>		first get Boise bags off and get them on their way; then work suitcases
<u>12:49:55 PM</u>		only work other luggage of those continuing on is for extra room for freight
<u>12:50:14 PM</u>		strong odor of suitcases
<u>12:50:25 PM</u>		green marijuana
<u>12:50:32 PM</u>		shut the door and called police
<u>12:50:54 PM</u>		red big suitcase
<u>12:51:53 PM</u>		identifies St exhibits 1-4
<u>12:52:35 PM</u>	State	move to admit 1-4
<u>12:52:44 PM</u>	PD	no objection
<u>12:52:47 PM</u>	Judge	1-4 are admitted
<u>12:54:08 PM</u>	Witness	black one was behind red one
<u>12:54:18 PM</u>		baggage claim tickets
<u>12:55:29 PM</u>		standard route
<u>12:56:06 PM</u>		show route in ticket and stopping points
<u>12:56:30 PM</u>		she could have stayed and got her ticket reissued
<u>12:57:46 PM</u>		opened compartment for officer Walker
<u>1:01:21 PM</u>		how Lovely was found
<u>1:01:50 PM</u>		we paged for her twice, driver started to reload, she didn't show at that time
<u>1:02:08 PM</u>		after bus loaded and driver counting tickets, that's when she showed up
<u>1:02:19 PM</u>		officer met her then
<u>1:03:01 PM</u>	PD	Cross exam
<u>1:03:44 PM</u>	Witness	policy
<u>1:04:17 PM</u>		doors automatically lock when brake is touched
<u>1:04:34 PM</u>		buttons on dash
<u>1:04:40 PM</u>		drivers do that
<u>1:05:10 PM</u>		scene of when bus pulls in
<u>1:06:16 PM</u>		baggage claim check, first of two
<u>1:07:03 PM</u>		difference with a passenger ticket
<u>1:07:41 PM</u>		stopping points, comes with every ticket
<u>1:07:57 PM</u>		greyhound computer
<u>1:08:11 PM</u>		saw her ticket and itinerary
<u>1:10:12 PM</u>	State	Redirect

<u>1:10:35 PM</u>		on tickets and signs of baggage check
<u>1:10:58 PM</u>		other signs
<u>1:11:09 PM</u>	Judge	witness may step down
<u>1:11:22 PM</u>	State	calls next witness
<u>1:11:59 PM</u>	Witness	Sworn
<u>1:12:02 PM</u>	State	Direct exam
<u>1:12:18 PM</u>	Witness	Officer Walker, police officer, experience and training
<u>1:13:25 PM</u>		trained in detecting that odor
<u>1:13:49 PM</u>		call regarding narcotics
<u>1:14:16 PM</u>		scene description
<u>1:15:01 PM</u>		actions taken at station, called for K9 officer
<u>1:15:58 PM</u>	PD	objection, heresay
<u>1:16:05 PM</u>	Judge	sustained
<u>1:16:35 PM</u>	Witness	contained clear plastic bags with green leafy substance
<u>1:16:53 PM</u>		other bags of wax substance
<u>1:17:01 PM</u>		no clothing
<u>1:17:07 PM</u>	PD	objection, foundation and leading
<u>1:17:18 PM</u>	Judge	sustained as to leading
<u>1:17:25 PM</u>	PD	objection, leading and foundation
<u>1:17:35 PM</u>	State	I'll rephrase
<u>1:17:54 PM</u>	Witness	looked at ticket on bag
<u>1:18:02 PM</u>		identified owner
<u>1:18:23 PM</u>		another suitcase found, black
<u>1:18:32 PM</u>		similar tags
<u>1:18:57 PM</u>		we were in a small room, red one was already there; couldn't smell the odor of black bag in that room with red
<u>1:19:25 PM</u>		found bags with green leafy substance
<u>1:19:37 PM</u>		located owner of bags
<u>1:20:07 PM</u>		identifies defendant
<u>1:20:19 PM</u>		spoke with her, she identified herself as Lori Lovely
<u>1:20:30 PM</u>		said the bags were hers
<u>1:20:35 PM</u>		she asked me why, I stated why and she said she had a script
<u>1:20:55 PM</u>		stayed in office for some minutes, located her CA id in her purse
<u>1:21:11 PM</u>		put her in my vehicle and suitcases in the trunk of my vehicle
<u>1:21:30 PM</u>		transported her and evidence to police station to meet with detectives
<u>1:21:45 PM</u>		turned her and evidence to detective Bruner and Zubzeretta
<u>1:22:00 PM</u>	PD	objection

<u>1:22:02 PM</u>	Judge	sustained
<u>1:22:08 PM</u>	Witness	didn't alter
<u>1:22:31 PM</u>	PD	Cross exam
<u>1:22:46 PM</u>	Witness	Officer Arthur opened bags
<u>1:22:59 PM</u>		used tool, they were locked
<u>1:23:16 PM</u>		believe red had a key lock, don't remember which on the black
<u>1:23:42 PM</u>		bus ticket
<u>1:23:50 PM</u>		ticket was in her purse
<u>1:24:16 PM</u>	State	Redirect
<u>1:24:59 PM</u>	Witness	other people were out on sidewalk, within 50 to 75 feet
<u>1:25:41 PM</u>	State	calls next witness
<u>1:26:02 PM</u>	Witness	Sworn
<u>1:26:18 PM</u>	State	Direct exam
<u>1:26:29 PM</u>	Witness	Officer Arthur, experience and training
<u>1:27:12 PM</u>		train drug dogs and handlers also
<u>1:30:34 PM</u>		odors Rocky is trained in
<u>1:31:18 PM</u>		met with Officer Walker and Ward Eversull
<u>1:31:28 PM</u>		where bus was located
<u>1:31:50 PM</u>		people inside station, not around bus
<u>1:31:59 PM</u>		doors were closed
<u>1:32:15 PM</u>		saw undercarage was full of bags
<u>1:32:22 PM</u>		asked if bag had been identified
<u>1:32:29 PM</u>		he pointed out large bag, red; exterior zippers
<u>1:33:07 PM</u>		put my head down and sniffed
<u>1:33:15 PM</u>		identified odor of marijuana
<u>1:34:07 PM</u>	State	have witness handed Ex's 1-4
<u>1:34:41 PM</u>	Witness	identifies Ex 1
<u>1:34:58 PM</u>		conducted a sniff with Rocky, starting at rear of bus at wheels
<u>1:35:34 PM</u>		dog alerted, had Officer Walker remove bag, while I put Rocky back in vehicle
<u>1:35:53 PM</u>		bag was closed with a lock on main clothing compartment
<u>1:36:06 PM</u>	State	request sidebar
<u>1:38:19 PM</u>	Witness	determined probable cause to open suitcases
<u>1:38:36 PM</u>		gallon size bags sealed, stacked in bag
<u>1:39:26 PM</u>		visual consistency and smell of marijuana
<u>1:39:36 PM</u>		identifies Ex's 5 and 6
<u>1:40:07 PM</u>	State	moves to admit
<u>1:40:11 PM</u>	PD	no objection
<u>1:40:15 PM</u>	Judge	5 and 6 are admitted
<u>1:42:57 PM</u>	Witness	left it as it was packaged

<u>1:44:05 PM</u>		then contacted Narcotics sargent to get detectives
<u>1:44:22 PM</u>		noticed tags and wondered if it had gave identity of owner
<u>1:44:46 PM</u>		Eversull said the tag showed there had to be another bag
<u>1:45:19 PM</u>		the other bag
<u>1:45:46 PM</u>	State	have you look at Exhibits 7-10
<u>1:46:19 PM</u>	Witness	identifies Ex 7
<u>1:46:42 PM</u>		identifies Ex 8
<u>1:46:51 PM</u>		identifies Ex 9
<u>1:47:04 PM</u>		identifies Ex 10
<u>1:47:28 PM</u>	State	move to admit 7-10
<u>1:47:35 PM</u>	PD	question regarding Ex 10
<u>1:48:35 PM</u>	State	move to admit 7-10
<u>1:48:44 PM</u>	PD	objection to Ex 10
<u>1:48:48 PM</u>	Judge	7-9 can be admitted
<u>1:49:36 PM</u>	State	more questions regarding ex 10
<u>1:49:49 PM</u>	Witness	don't know where 10 came, out of black or red
<u>1:50:10 PM</u>	Judge	Sidebar
<u>1:51:34 PM</u>	Judge	take a recess
<u>1:52:32 PM</u>	Judge	my concern with Ex 10
<u>1:52:46 PM</u>	State	will withdraw for Ex 10 at this time
<u>1:53:13 PM</u>	State	just sent chemist home for the day, this will be the last witness
<u>1:57:38 PM</u>		will view evidence tomorrow
<u>1:58:13 PM</u>	Judge	Ex, 7, 8 and 9 are admitted; Ex 10 has been withdrawn
<u>1:58:38 PM</u>	State	publishes
<u>2:01:10 PM</u>	Witness	present when she was arrested, she was told and she said she had a script
<u>2:02:03 PM</u>		identifies Lori Lovely
<u>2:03:06 PM</u>	PD	Cross exam
<u>2:04:14 PM</u>	Witness	used leatherman's tool
<u>2:04:38 PM</u>		didn't break lock itself
<u>2:04:43 PM</u>		small keylock
<u>2:04:48 PM</u>		didn't look for a key
<u>2:06:30 PM</u>		handwriting
<u>2:07:20 PM</u>	State	no redirect
<u>2:07:26 PM</u>	Judge	things are going faster
<u>2:07:36 PM</u>		we'll break for today
<u>2:07:42 PM</u>		admonission
<u>2:09:19 PM</u>		work on resolution on boxes of marijuana

<u>2:09:32 PM</u>		looked at revised jury instruction in respect to elements with alternate language
<u>2:09:56 PM</u>	PD	not an objection, but just how it's worded
<u>2:10:57 PM</u>	State	response and request
<u>2:11:20 PM</u>	PD	no objection to that
<u>2:11:32 PM</u>	State	proposal of timing for tomorrow
<u>2:12:37 PM</u>	Judge	submit alternate proposed instruction
<u>2:13:23 PM</u>		recess for today

Time	Speaker	Note
8:55:40 AM		St. v. Lori Lovely Trial – Day 2
8:55:44 AM	Judge	calls case, Josh Haws and Michael Guy present for State; Kimberly Simmons and Simon Billinge for defendant
8:55:52 AM		evidence problem solved?
8:55:58 AM	State	response
8:56:03 AM	PD	didn't know he was going to bring in pot before it was admitted
8:56:32 AM		will stipulate to once this foundation is relayed
8:56:46 AM		can stipulate to after that small foundation was layed
8:57:04 AM	Judge	comments
8:57:22 AM		where would marijuana be?
8:57:38 AM	State	has to stay with officer, he's the booking officer; still be sealed in cardboard boxes
8:58:05 AM		there is no other way
8:58:52 AM		won't display evidence before foundation is layed
8:58:59 AM	PD	disagree that's there any other way this can be done; others can babysit the evidence
8:59:20 AM		object before stipulated admission
8:59:26 AM	Judge	question
8:59:50 AM	PD	won't object to chain of custody
9:00:02 AM	Judge	it's currently in conference room with officer
9:00:40 AM	State	this option
9:01:07 AM	PD	want lab tech to testify that it arrived to her in that condition
9:01:30 AM	Judge	what's the prejudice to your client?
9:01:50 AM		if they can't admit it and can't prove it's marijuana
9:02:04 AM	PD	response
9:02:39 AM		don't have confidence court would dismiss
9:03:14 AM	Judge	question for state
9:03:54 AM		we've already heard about the order and pictures of all the packages of the leafy substance
9:04:21 AM		it will either be admitted or not admitted
9:04:50 AM	PD	response
9:05:09 AM	Judge	not force the state to agree with that
9:05:22 AM		will let officer bring it in with the cardboard box
9:05:34 AM	PD	note our continued objection
9:05:46 AM	Judge	looked over Simmons jury instruction
9:06:04 AM		don't have problem with "knowing"
9:06:28 AM		the change I propose
9:06:54 AM	State	no objection
9:06:57 AM	PD	no objection
9:07:02 AM	Judge	anything else?

<u>9:07:05 AM</u>	State	just clarify with counsel
<u>9:07:47 AM</u>	State	the chemist is here and she can sit with the evidence; just out of the ordinary
<u>9:08:01 AM</u>	Judge	this is an unordinary case
<u>9:08:12 AM</u>	State	ready to proceed
<u>9:09:53 AM</u>	Judge	jury is present
<u>9:10:03 AM</u>	State	calls next witness
<u>9:10:27 AM</u>	Witness	Sworn
<u>9:10:54 AM</u>	State	Direct Exam
<u>9:11:00 AM</u>	Witness	Detective Bruner, experience and training
<u>9:13:52 AM</u>		received a call from that location and I responded to police department
<u>9:14:30 AM</u>		another detective met me there
<u>9:15:03 AM</u>		the other detective is at the school I mentioned in Seattle right now
<u>9:15:42 AM</u>		met with officer walker
<u>9:15:51 AM</u>		female suspect was already there
<u>9:16:14 AM</u>		identifies suspect
<u>9:16:30 AM</u>		handcuffs had already been removed
<u>9:16:40 AM</u>		met in interview room
<u>9:16:58 AM</u>		time of arrival took control of evidence, placed on table, myself or other detective stayed with evidence
<u>9:17:23 AM</u>		two large suitcases, black and a red one, then a purse
<u>9:17:42 AM</u>		didn't process then, later
<u>9:17:50 AM</u>		describes process
<u>9:18:59 AM</u>		evidence tape on box, sign and seal it
<u>9:19:25 AM</u>		tape seams of box
<u>9:19:40 AM</u>		NIC test
<u>9:19:57 AM</u>	PD	objection, move to strike
<u>9:20:04 AM</u>	Judge	sustained, jury will disregard answer
<u>9:20:27 AM</u>	State	have witness show Ex 1-9
<u>9:20:54 AM</u>	Witness	black suitcase
<u>9:21:15 AM</u>		recognize those
<u>9:21:19 AM</u>		present when taken
<u>9:21:26 AM</u>		how they were packed
<u>9:21:50 AM</u>		how I'd identify bag from which test was done
<u>9:22:14 AM</u>		executed training and correct equipment
<u>9:22:33 AM</u>		tested positive for marijuana
<u>9:22:40 AM</u>		other tests
<u>9:22:46 AM</u>		packages of what's known as marijuana wax
<u>9:22:55 AM</u>		tested one of those bags
<u>9:23:16 AM</u>	State	have you see St Ex 10 and 11
<u>9:23:26 AM</u>	Witness	identifies Ex 10

9:23:30 AM	PD	objection, foundation
9:23:35 AM	State	sustained
9:23:55 AM	State	move to admit St 10
9:24:02 AM	PD	no objection
9:24:06 AM	Judge	10 is admitted
9:24:12 AM	Witness	identifies Ex 11
9:24:49 AM	State	move to admit Ex 11
9:24:54 AM	PD	no objection
9:25:19 AM	Judge	11 is admitted
9:25:24 AM	Witness	only 4 packages
9:25:44 AM		not my writings
9:25:55 AM		know what they mean from training
9:26:36 AM		explains writings on marijuana wax bags
9:27:10 AM		quarter pound in each
9:27:41 AM		seen it before
9:28:00 AM		more costly by weight, it's more concentrated; highly concentrated THC
9:28:22 AM	PD	objection, foundation; can we approach
9:29:30 AM	State	to clarify
9:29:42 AM	Witness	wasn't tested
9:29:55 AM	State	if it were marijuana wax
9:30:02 AM	Witness	is more costly
9:30:28 AM		1 gram of marijuana is \$20 to 30 a gram; wax is \$100 a gram here in Idaho
9:32:41 AM		street terminology
9:32:54 AM		thc concentrated in the bud of the plant
9:33:45 AM		variables of lbs and frequency; how many middlemen between you and the source; general cost for here in valley
9:35:30 AM		scale is to just give idea of the quantity
9:35:47 AM		roughly the same weight eacy
9:35:53 AM		each of the buds were approx. a lb
9:36:08 AM		37 bags total
9:36:21 AM		we cataloged
9:36:58 AM	PD	objection, foundation
9:37:03 AM	Judge	sustained, ask jury to disregard
9:37:14 AM	Witness	placed in cardboard boxes and sealed; packages from red suitcase into one box; those from black suitcase to other box
9:37:55 AM		where all weighing and NIC testing took place
9:38:17 AM		placed in evidence locker and records kept
9:40:35 AM		watched other detective place the seals over the evidence tape
9:41:16 AM	State	would like to bring the 37 packages in

<u>9:41:24 AM</u>	PD	would like to approach
<u>9:42:00 AM</u>	State	ask Detective Bruner to step down and retrieve some boxes
<u>9:42:13 AM</u>	PD	no objection, subject to another witness
<u>9:42:22 AM</u>	Judge	deal with connecting up at another time
<u>9:44:17 AM</u>	State	could you place those large two boxes on table by you
<u>9:44:33 AM</u>	Witness	these are the boxes
<u>9:44:46 AM</u>		points out the seals
<u>9:45:19 AM</u>	State	withdraw that question
<u>9:45:29 AM</u>	Witness	both boxes are upside down
<u>9:45:57 AM</u>		explains
<u>9:46:55 AM</u>	PD	requests moment with counsel
<u>9:47:40 AM</u>	State	can you retrieve and find St ex 20
<u>9:48:02 AM</u>	State	move to admit 20 thru 46
<u>9:48:11 AM</u>	PD	conditionally stipulate to admission
<u>9:48:27 AM</u>		subject to testimony of state lab and testing and how it arrived at state lab
<u>9:48:43 AM</u>	Judge	State's 20-45 is admitted conditionally
<u>9:49:25 AM</u>	Witness	these boxes are for marijuana or suspected marijuana wax
<u>9:49:51 AM</u>		explains which box corresponds to which suitcase
<u>9:50:33 AM</u>	State	move to publish at this time
<u>9:50:43 AM</u>	Witness	explains markings on the bags
<u>9:52:58 AM</u>	State	pull out 21 thru 25 also for sample size
<u>9:54:46 AM</u>		writing on bags, explains what's on 24
<u>9:55:07 AM</u>		different strains, growers cross-pollinate
<u>9:57:23 AM</u>		documented what we received back from lab
<u>9:57:57 AM</u>	State	request Ex 20 be circulated thru the jury
<u>9:58:08 AM</u>	Judge	very well
<u>9:58:28 AM</u>	Witness	that's the marijuana bud, highest concentration of THC; look like nuggets
<u>9:59:00 AM</u>		no stems or leaves
<u>9:59:06 AM</u>		manicured professionally
<u>9:59:15 AM</u>		great care taken to make sure it was just the bud
<u>9:59:47 AM</u>		good quality
<u>10:00:00 AM</u>		if leaves or stems, would lower the price
<u>10:00:13 AM</u>	State	have last bag back from and placed back in box
<u>10:00:28 AM</u>		now retrieve a bag from the other box
<u>10:01:08 AM</u>	Witness	these are the only ones marked from the red suitcase box
<u>10:01:23 AM</u>	State	20 marked from the first box and then 6 from the red
<u>10:01:47 AM</u>	Witness	these 6 are well trimmed and just the bud
<u>10:02:02 AM</u>		strains read
<u>10:02:45 AM</u>		didn't open these

10:03:09 AM	State	please store back into box
10:03:56 AM	Witness	contraband in her purse
10:04:12 AM		other detective searched her purse, he informed me and I observed myself
10:04:29 AM		gold color lipstick container and had plastic baggie with white material
10:05:11 AM		NIC test performed
10:05:24 AM		test done by both of us
10:06:53 AM	State	have you handed a box after counsel looks first
10:07:15 AM		please exam contents
10:07:29 AM	Witness	familiar with contents
10:07:44 AM	State	have you handed 12, 13, and 14
10:08:03 AM	Witness	identifies 12, photo of purse
10:08:43 AM	State	move to admit 12
10:08:48 AM	PD	no objection
10:08:52 AM	Judge	12 is admitted
10:08:57 AM	Witness	identifies 13, photo of plastic baggie
10:09:17 AM	State	move to admit 13
10:09:21 AM	PD	no objection
10:09:23 AM	Judge	admit 13
10:09:27 AM	Witness	identifies ex 14
10:09:48 AM	State	move to admit 14
10:09:52 AM	PD	no objection
10:10:01 AM	Judge	14 is admitted
10:12:04 AM	State	have you examine State's 15 and 16
10:12:40 AM	Witness	property invoice on each bag we placed, making sure it matched up
10:13:16 AM	State	move to admit 15 and 16
10:13:23 AM	PD	request to approach and examine suitcases and invoices
10:14:00 AM		No objection
10:14:03 AM	Judge	15 and 16 are admitted
10:15:38 AM	Witness	identifies 17
10:16:23 AM	PD	object, not admitted yet
10:16:40 AM	Witness	items seized from her purse
10:16:52 AM		sealed them
10:17:08 AM	State	move to admit 17
10:17:13 AM	PD	questions for clarification
10:18:11 AM	Judge	17 is admitted
10:18:42 AM	Witness	identifies 18
10:18:46 AM	State	moves to admit 18
10:18:51 AM	PD	no objection
10:18:54 AM	Judge	18 admitted

10:18:58 AM	Witness	identifies Ex 19
10:19:44 AM	State	move to admit 19
10:19:49 AM	PD	no objection
10:19:52 AM	Judge	19 is admitted
10:19:56 AM	State	move to publish
10:20:33 AM	Witness	explains Ex 17
10:21:10 AM	State	counsel and I stipulate that you remove the invoice
10:21:37 AM	State	move to readmit 17
10:21:44 AM	PD	no objection
10:21:49 AM	Judge	17 will be readmitted
10:22:31 AM	Witness	explains her medical card; issued for medicinal amounts
10:22:45 AM	PD	objection, foundation
10:22:50 AM	Judge	more foundation
10:23:35 AM	Witness	CA is a medicinal state
10:23:58 AM		controlled
10:24:19 AM		medicinal use amounts, not trafficking amounts
10:26:07 AM	State	display exhibit 18
10:26:26 AM		then 19
10:26:44 AM	State	ask bailiff to hand me Ex 17 for additional display
10:30:51 AM	Judge	take a break; admonishes jury
10:31:51 AM	State	comment
10:32:04 AM	Judge	recess
10:51:51 AM	State	continues direct
10:52:35 AM	State	move to admit 46-60
10:53:05 AM	PD	no objection
10:53:08 AM	Judge	Ex 46-60 is admitted
10:54:02 AM	Witness	she was already in interview room
10:54:13 AM		identified myself, offered water and use of bathroom
10:54:40 AM		informed her of camera in interview room
10:54:53 AM		she didn't want interview recorded
10:54:59 AM		gave miranda rights and provided form as I read them outloud
10:55:12 AM		she agreed to speak to me
10:57:20 AM		she acknowledged it belonged to her and she was transporting it
10:58:44 AM		she acknowledged she lived in CA, purchased additional tickets in Portland to Minnesota
10:59:19 AM		she was being paid in cash for this trip
10:59:52 AM		the Mike individual told her to purchase these tickets in the manner to conceal the final destination
11:00:23 AM		wouldn't give full disclosure as to the Mike individual
11:01:33 AM		she acknowledged the medical marijuana card didn't give her the authority to transport the amounts

11:01:57 AM		said she doesn't like to smoke it, likes it in candy form
11:02:27 AM		she believed Mike obtained the marijuana from different growers
11:03:11 AM		asked what took place at the station and what she told me
11:04:44 AM		she considered leaving and not reboarding
11:05:04 AM	State	request officer be shown his police report to refresh recollection
11:05:30 AM		not to read, but refresh
11:06:04 AM		she said she wasn't totally innocent, knew what was in the bag and would take it like a man
11:08:47 AM	PD	Cross exam
11:10:45 AM	Witness	I'm also associated with DEA, have national jurisdiction
11:11:49 AM		value of thc in OR and CA
11:13:10 AM		where boxes went after sealed and explains building
11:15:10 AM	PD	requests Ex 17, already admitted
11:15:23 AM	Witness	condition of boarding passes in purse
11:17:23 AM		explains what a drug mule is
11:17:41 AM		said she was \$500 upfront and would get \$3000 at end
11:18:29 AM	State	no redirect
11:19:00 AM	State	calls next witness
11:19:34 AM	Witness	Sworn
11:19:39 AM	State	would Detective Bruner back to put the bags back
11:21:33 AM	State	Direct exam
11:21:38 AM	Witness	Kari Russell, work experience and training
11:25:38 AM	State	need to recall Detective Bruner
11:25:53 AM		withdraw that for now
11:26:07 AM	Witness	how I obtained them
11:27:50 AM		seals
11:29:19 AM	State	ask you to find State Ex 20
11:30:17 AM		steps of testing
11:31:38 AM		color change
11:31:55 AM		tested 26 bags
11:32:14 AM		I date and initial all of my seals
11:36:11 AM	PD	objection, can we see these first
11:36:52 AM		withdraw objection
11:37:58 AM	Witness	question
11:39:53 AM		appear the same
11:41:22 AM		20-45 each contain marijuana
11:42:10 AM	State	move for full admission of 20-45
11:42:17 AM	PD	pending confirmation of DR #
11:42:37 AM	Judge	first condition has been met
11:43:56 AM	Witness	did no analysis on those

11:44:21 AM		met the 25 lb threshold
11:44:58 AM		total net weight
11:45:57 AM		in my report
11:48:39 AM	State	have you look at Ex 19
11:48:59 AM	Witness	examined
11:49:17 AM		dr number
11:49:29 AM		was in a sealed condition
11:49:51 AM		testing process
11:51:14 AM		substance was methamphetamine
11:51:23 AM		net weight
11:51:58 AM	State	move to admit 19 fully
11:52:11 AM	PD	DR # is our problem
11:52:57 AM	Judge	have officer come back, a bit out of order so he doesn't have to wait around
11:53:20 AM	Judge	you're still under oath
11:53:27 AM	State	Direct
11:53:40 AM	Witness	Detective Bruner
11:54:07 AM		the DR number
11:54:23 AM		on all items
11:54:27 AM	PD	no cross
11:54:30 AM	State	move for full admission of 20-45, and 19
11:54:46 AM	PD	no objection
11:54:53 AM	Judge	19-45 will be fully admitted
11:55:25 AM		admonishes
11:56:07 AM		recess
12:41:51 PM	Judge	back on record
12:41:58 PM		given final substantive instructions
12:42:47 PM		bring jury in
12:44:41 PM		jury present
12:45:26 PM	Judge	continue with Cross of Mrs. Russell
12:45:35 PM	PD	continues cross
12:47:15 PM	Witness	my proficiency testing
12:48:36 PM		pass/fail, no grade associated with it
12:54:05 PM		lab environment, vault and lab #
12:58:20 PM		no anomalies
1:01:34 PM		describes balance machine
1:02:32 PM	State	objection, relevance
1:02:49 PM	Judge	give some leeway
1:04:42 PM	Witness	explains uncertainty of measurement
1:12:00 PM	State	objection, asked and answered
1:12:08 PM	Judge	she can answer
1:15:20 PM	State	objection, to continuing questions of the scale

<u>1:15:52 PM</u>	Judge	allow
<u>1:17:37 PM</u>	State	objection; can we approach?
<u>1:18:58 PM</u>	Judge	objection, sustained
<u>1:23:41 PM</u>	State	no redirect
<u>1:23:45 PM</u>	State	state rests
<u>1:24:18 PM</u>	Judge	now we have some legal issues to work on before the defense presents itself
<u>1:25:04 PM</u>	PD	request some time to speak with my client
<u>1:25:18 PM</u>	Judge	recess
<u>1:30:27 PM</u>	Judge	Simmons?
<u>1:30:37 PM</u>	PD	after discussion, my client has decided not to testify and I will not do an opening statement
<u>1:31:00 PM</u>	Judge	Questions def regarding right to testify
<u>1:34:07 PM</u>		find defendant understands
<u>1:34:13 PM</u>		will need to add the instruction back in
<u>1:34:23 PM</u>		will go fix instructions
<u>1:49:53 PM</u>	Judge	given you the new jury instructions
<u>1:50:35 PM</u>		bring jury back
<u>1:51:58 PM</u>	PD	waive opening statement
<u>1:52:04 PM</u>		no witness
<u>1:52:07 PM</u>		we rest
<u>1:52:20 PM</u>	Judge	provide copy of instructions to jurors
<u>1:52:59 PM</u>	Judge	jury instructions
<u>1:59:33 PM</u>	State	Closing Argument
<u>2:15:33 PM</u>	PD	Closing argument
<u>2:25:51 PM</u>	State	Final remarks
<u>2:34:31 PM</u>	Judge	Final instructions
<u>2:38:52 PM</u>	Clerk	alternate juror selected #11
<u>2:41:43 PM</u>		alternate juror sworn
<u>2:42:52 PM</u>		bailiff sworn
<u>2:42:59 PM</u>	Judge	jury to deliberate
<u>3:32:59 PM</u>		St. v. Lori Lovely CRFE14-4550 Jury Trial – Day 2
<u>3:32:59 PM</u>	Judge	recalls case
<u>3:32:59 PM</u>		jury now present
<u>3:32:59 PM</u>		foreperson please rise
<u>3:42:31 PM</u>	Clerk	reads verdict
<u>3:43:23 PM</u>	Judge	parties decline polling
<u>3:43:31 PM</u>		order psi
<u>3:44:26 PM</u>		sentencing Nov 18th at 2pm
<u>3:44:33 PM</u>		bail exonerated, defendant to be held in custody
<u>3:45:55 PM</u>		thanks jury and final instruction

3:49:00 PM

end of case

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF SEP 18 2014

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY

Defendant.

Case No. CR-FE-2014-0004550

JURY INSTRUCTIONS

HONORABLE STEVEN J. HIPPLER

DISTRICT JUDGE

PRESIDING

EL

INSTRUCTION NO. /

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the State has the burden of proof, it goes first. After the State's opening statement, the defense may make an opening statement, or may wait until the State has presented its case. The opening statements of counsel are not evidence.

The State will offer evidence that it says will support the charge against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the State may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the State and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 2

This criminal case has been brought by the State of Idaho. I will sometimes refer to the State as the prosecution.

The defendant is charged by the State of Idaho with violations of the law. The charge against the defendant is contained in the Information. I will now read the Information and state the defendant's plea: **[Information read to jury and Plea stated]**

The Information is simply a description of the charge; it is not evidence.

INSTRUCTION NO. 3

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove her innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 4

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you

from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 5

You are instructed that any terms in these instructions which have a special legal meaning are defined for you in these instructions. Under Idaho law, if a word or phrase is not otherwise defined in these instructions, you are to construe that word or phrase according to its context and the approved usage of the language as the ordinary reading public would read and understand it. Words not otherwise defined should be given their ordinary significance as popularly understood. They do not have some mysterious or specialized meaning simply because they are a part of a jury instruction unless the Court has specifically defined them for you.

INSTRUCTION NO. 6

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 7

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 8

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

Although the court reporter will create a verbatim account of all matters of record occurring in this trial, you should be aware that transcripts of witness testimony will not be available to you for your deliberations.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 9

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

Do not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. "No discussion" also means no emailing, text messaging, tweeting, blogging, facebook, flickr, google plus, linkedin, instagram, myspace, pinterest, tumblr, electronic bulletin boards or any other form of communication.

Do not discuss this case with other jurors until you begin your deliberations at the end of the trial. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don't think you are paying attention, but because experience has shown this is one of the hardest instructions for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common: what they just watched together.

There are at least two reasons for this rule. The first is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won't have that until the very end of the trial. The second reason for the rule is that we want all of you working together on this decision when you deliberate. If you have conversations in groups of two or three during the trial, you

won't remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial.

Ignore any attempted improper communication. If any person tries to talk to you about this case, tell that person that you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to the bailiff. Do not tell your fellow jurors what has occurred.

Do not make any independent personal investigations into any facts or locations connected with this case. **Do not** look up any information from any source, including the Internet. **Do not** communicate any private or special knowledge about any of the facts of this case to your fellow jurors. **Do not** read or listen to any news reports about this case or about anyone involved in this case, whether those reports are in newspapers or the Internet, or on radio or television.

In our daily lives we may be used to looking for information on-line and to "Google" something as a matter of routine. Also, in a trial it can be very tempting for jurors to do their own research to make sure they are making the correct decision. You must resist that temptation for our system of justice to work as it should. I specifically instruct that you must decide the case only on the evidence received here in court. If you communicate with anyone about the case or do outside research during the trial it could cause us to have to start the trial over with new jurors and you could be held in contempt of court.

The reason for these rules is simple: this would be unfair to both the State and the defendant. Reporters, bloggers, tweeters, writers of letters to the editor, and commentators are not subject to cross-examination in court under oath to point out inaccuracies in the facts they present or the opinions they hold. Their information may be second hand or may come from

sources which have only limited knowledge of the facts or simply an ax to grind. These people, as well, are not subject to cross-examination in court under oath.

In addition, neither counsel can address facts or opinions which you may have formed based upon facts they have never heard and which in reality might not even exist.

While you are actually deliberating in the jury room, the bailiff will confiscate all cell phones and other means of electronic communications. Should you need to communicate with me or anyone else during the deliberations, please notify the bailiff.

POST-PROOF INSTRUCTIONS

INSTRUCTION NO. 10

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 11

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 12

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on either or both of the offenses charged.

INSTRUCTION NO. 13

In order for the defendant to be guilty of Count I for Trafficking in Marijuana, the state must prove each of the following:

1. On or about April 1, 2014,
2. in the state of Idaho
3. the defendant either possessed marijuana, or knowingly brought marijuana into this State, and
4. knew it was marijuana, and
5. the amount of marijuana possessed or brought into the state was at least 25 pounds.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 14

The term "marijuana" as used in these instructions means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination.

INSTRUCTION NO. 15

In order for the defendant to be guilty of Count II for Possession of a Controlled Substance, the state must prove each of the following:

1. On or about April 1, 2014,
2. in the state of Idaho,
3. the defendant possessed any amount of methamphetamine, and
4. the defendant either knew it was methamphetamine or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 16

A person has possession of something if the person knows of its presence and has physical control of it, or has the power and intention to control it. More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

INSTRUCTION NO. 17

Under Idaho law, methamphetamine and marijuana are controlled substances.

INSTRUCTION NO. 18

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 19

The fact the Court either overrules or sustains an objection to a question, or to testimony made, or to an argument advanced, is not a comment on the innocence or the guilt of the defendant or upon which counsel's argument is or is not to be believed. Counsel's statements are not evidence, nor are my rulings on objections made in a case. It is the job of counsel to raise objections they feel are appropriate just as it is my job to rule upon them.

INSTRUCTION NO. 20

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 21

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. Counsel have completed their closing remarks to you, and now you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during

the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 22

The instructions and the exhibits will be with you in the jury room. The exhibits are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap. You may feel free to mark on your copy of the jury instructions if you wish to.

INSTRUCTION NO. 23

I will now draw the names of the alternate juror to whom I will once again apologize in advance. I will advise the alternate chosen that even at this time, it is possible, should some problem arise, that you could be recalled and the jury instructed to begin its deliberations anew with an alternate juror seated. For that reason, you are admonished not to discuss this case with other jurors or anyone else, nor to form an opinion as to the merits of the case or the defendant's innocence or guilt in this case.

Please leave your name and telephone number with the bailiff. The Court will call you to advise you when any verdict is reached and what that verdict may be, or to advise you if for any reason, you may be required to return to court for deliberations. Thank you for your service.

INSTRUCTION NO. 24

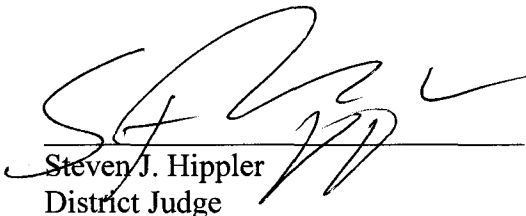
Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding officer will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise. If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

Dated this 18th day of September, 2014.



Steven J. Hippler
District Judge

SEP 18 2014

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

STATE OF IDAHO,

Plaintiff,

Case No. CR-FE-2014-0004550

vs.

LORI ELIZABETH LOVELY

VERDICT

Defendant.

We, the Jury, unanimously find the defendant, Lori Elizabeth Lovely,

COUNT I

MARK ONLY ONE OF THE FOLLOWING COUNT I VERDICTS

NOT GUILTY of Trafficking in Marijuana

GUILTY of Trafficking in Marijuana

X

COUNT II

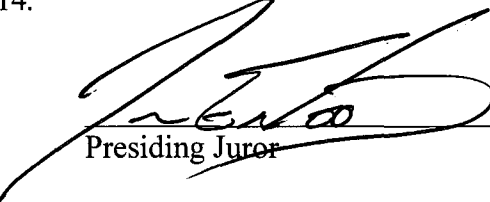
MARK ONLY ONE OF THE FOLLOWING COUNT II VERDICTS

NOT GUILTY of Possession of a Controlled Substance

GUILTY of Possession of a Controlled Substance

X

Dated this 18th day of September, 2014.


Presiding Juror

EL

Time	Speaker	Note
3:26:02 PM		St. v. Lori Lovely Sentencing CRFE14-4550 Cust
3:26:05 PM	Judge	calls case, def present in custody
3:26:13 PM	State	Joshua Haws
3:26:17 PM	PD	Nicole Owens
3:26:28 PM	Judge	def previously found guilty by jury
3:27:10 PM		ordered psi and reviewed
3:27:21 PM		no legal cause
3:27:32 PM		both parties and defendant have reviewed psi
3:27:41 PM		no errors
3:28:03 PM	State	restitution \$7,077.45
3:28:50 PM	PD	no objection
3:28:55 PM	Judge	restitution will be entered
3:29:01 PM	State	argues sentencing and rec's
3:35:00 PM	PD	argues sentencing and rec's
3:40:44 PM	Defendant	Statement
3:42:36 PM	Judge	upon jury's verdict I find you guilty
3:43:33 PM		comments
3:52:52 PM		JOC: ct 1: 15=6+9; ct 2: 7=2+5; concurrent; remanded; bail exonerated; cts d; dna sample and right thumbprint; no court costs; fine \$15,000 on ct 1; no fine on ct 2; restitution of \$7,077.45
3:55:21 PM		Appeal rights
3:55:27 PM		end of case

NOV 24 2014

CHRISTOPHER D. RICH, Clerk
By KIERSTEN HOUST
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

-VS-

LORI ELIZABETH LOVELY,

[REDACTED]

Defendant.

Case No. CR FE 2014-0004550

**JUDGMENT OF CONVICTION
AND COMMITMENT**

On November 18, 2014, Joshua Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and the defendant, Lori Elizabeth Lovely, with her attorney, Nicole Owens, appeared before this Court for sentencing.

The defendant was duly informed of the Information filed against her, and the defendant having been found guilty by a jury thereto on September 18, 2014 to the crimes of COUNT I: TRAFFICKING IN MARIJUANA, FELONY, I.C. § 37-2732B(a)(1) and COUNT II: POSSESSION OF A CONTROLLED SUBSTANCE, FELONY, I.C. § 37-2732(c), committed on or about April 1, 2014.

The defendant, and defendant's counsel, were then asked if they had any legal cause or reason to offer why judgment and sentence should not be pronounced against the defendant, and

KDA

if the defendant, or defendant's counsel, wished to offer any evidence or to make a statement on behalf of the defendant, or to present any information to the Court in mitigation of punishment; and the Court, having accepted such statements, and having found no legal cause or reason why judgment and sentence should not be pronounced against the defendant at this time; does render its judgment of conviction as follows, to-wit:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the crimes of COUNT I: TRAFFICKING IN MARIJUANA, FELONY, I.C. § 37-2732B(a)(1) and COUNT II: POSSESSION OF A CONTROLLED SUBSTANCE, FELONY, I.C. § 37-2732(c), and that she be sentenced pursuant to the Uniform Sentence Law of the State of Idaho, I.C. § 19-2513, to the custody of the State of Idaho Board of Correction as follows:

Count I: Defendant shall serve an aggregate term of fifteen (15) years: with the first six (6) years of the term to be FIXED, and with the remaining nine (9) years of the term to be INDETERMINATE, with such sentence to commence immediately.

Count II: Defendant shall serve an aggregate term of seven (7) years: with the first two (2) years of the term to be FIXED, and with the remaining five (5) years of the term to be INDETERMINATE, with such sentence to commence immediately.

Said sentences shall run concurrent with one another.

Pursuant to I.C. § 18-309, the defendant shall be given credit for the time already served upon the charges specified herein, which is two hundred thirty-two (232) days as of the date of sentencing.

The defendant shall submit a DNA sample and right thumbprint impression to authorities pursuant to I.C. § 19-5506 within ten (10) days of this judgment.

IT IS FURTHER ADJUDGED that pursuant to I.C. § 37-2732B(a)(1) the defendant be, and hereby is, assessed and ordered to pay a mandatory minimum fine in the amount of \$15,000.00, assessed on Count I, there is no fine assessed on Count II. The fine shall be paid through the Clerk of the District Court.

Pursuant to I.C. § 19-5304, the defendant shall pay restitution in the amount of \$7,077.45, bearing interest at the statutory rate of 5.125% per annum until paid in full. The defendant shall pay restitution through the Clerk of the District Court.

The defendant shall pay an amount to be determined by the Department of Correction, not to exceed one hundred dollars (\$100), for the cost of conducting the pre-sentence investigation and preparing the pre-sentence investigation report. The amount will be determined by the Department and paid by the defendant in accordance with the provisions of I.C. § 19-2516.

The defendant shall be remanded to the custody of the Sheriff of Ada County, to be delivered FORTHWITH by him into the custody of the Director of the State Board of Correction of the State of Idaho.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this Judgment and Commitment to the said Sheriff, which shall serve as the commitment of the defendant.

NOTICE OF RIGHT TO APPEAL

You, Lori Elizabeth Lovely, are hereby notified that you have the right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days from the entry of this judgment.

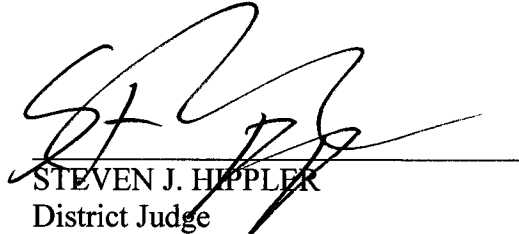
You are further notified that you have the right to be represented by an attorney in any appeal, that if you cannot afford to retain an attorney, one may be appointed at public expense.

Further, if you are a needy person, the costs of the appeal may be paid for by the State of Idaho.

If you have questions about your appeal rights, you should consult your present lawyer.

IT IS SO ORDERED.

Dated this 21st day of November 2014.


STEVEN J. HIPPLER
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of November 2014, I mailed (emailed) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR'S OFFICE
VIA EMAIL

ADA COUNTY PUBLIC DEFENDER'S OFFICE
VIA EMAIL

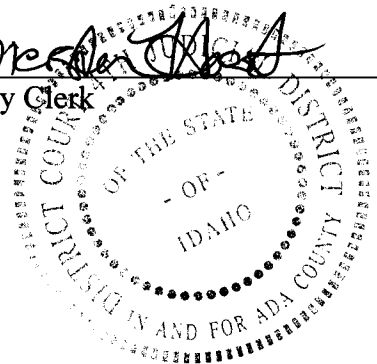
ADA COUNTY JAIL
VIA EMAIL

IDAHO DEPARTMENT OF CORRECTION
VIA EMAIL

PSI DEPARTMENT
VIA EMAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Clerk



Ada County Mugshot - Prosecutor's Office



User: PRKNUTRS



Photo Taken: 2014-04-01 15:27:12

Name: LOVELY, LORI ELIZABETH

Case #: CR-FE-2014-0004550

LE Number: 1056534

Height: 504

Weight: 120

Drivers License Number:

Drivers License State:

Sex: F Race: W Eye Color: BLU Hair Color: BLN Facial Hair:

Marks: ARM, RIGHT UPPER

Scars:

Tattoos:

NOV 24 2014

CHRISTOPHER D. RICH, Clerk
By KIERSTEN HOUST
DEPUTY

Greg H. Bower
Ada County Prosecuting Attorney

Joshua P. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Fax: (208)-287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2014-0004550
)	
vs.	)	ORDER FOR RESTITUTION
	)	AND JUDGMENT
Lori Elizabeth Lovely,)	
)	
Defendant.)	
_____)	

WHEREAS, on the 18th day of November 2014 a Judgment of Conviction was entered against the Defendant, Lori Elizabeth Lovely; and therefore pursuant to Idaho Code §37-2732(k) and based on evidence presented to this Court;

IT IS HEREBY ORDERED, that the Defendant, Lori Elizabeth Lovely, shall make restitution to the victim(s) and/or law enforcement agency(ies) in the following amounts of:

YMA

DRUG ENFORCEMENT DONATION ACCOUNT
ACPO DRUG PROSECUTION RESTITUTION
BCPD ATTN BANDIT

\$2,700.00
\$3,514.00
\$863.45

TOTAL:

\$7,077.45

Post judgment interest on said restitution amount will accrue from the date of this Order and Judgment at the rate specified in Idaho Code §28-22-104.

FURTHER, pursuant to I.C. 19-5305 this Order may be recorded as a judgment against the Defendant, Lori Elizabeth Lovely, and the listed victim(s) may execute as provided by law for civil judgments.

FURTHER, it is the responsibility of the Defendant to notify the Restitution Department (208-287-7700) if at any time a victim collects by means of the civil judgment.

IT IS SO ORDERED.

DATED this 20th day of November 2014.

Judge



**STATEMENT OF COSTS AND
REQUEST FOR RESTITUTION IN A DRUG CASE**

Defendant: LORI ELIZABETH LOVELY

Case: CR-FE-2014-0004550

I, Joshua P. Haws, Deputy Prosecuting Attorney for State of Idaho, County of Ada, am aware that the Ada County Prosecutor's Office keeps records regarding the attorney time spent prosecuting drug cases in anticipation of submitting a request for restitution pursuant to I.C. §37-2732(k). I have reviewed the time log in this case, which documents the prosecutor time spent prosecuting the above referenced drug case. The Ada County Prosecutor's Office spent 25.1 attorney hours at an attorney rate of \$140.00 per hour prosecuting this case, not including preparation and argument for the sentencing hearing. Pursuant to Idaho Code §37-2732(k), the State requests restitution in the amount of \$3,514.00.

Dated this 26th day of September 2014.



Deputy Prosecuting Attorney

128

NO. _____ FILED _____
A.M. _____ P.M. _____

NOV 24 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant-Appellant

Nicole Owens
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

LORI ELIZABETH LOVELY,

Defendant-Appellant.

Case No. CR-FE-2014-0004550

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE CLERK
OF THE ABOVE-ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

- 1) The above-named Appellant appeals against the above-named Respondent to the Idaho Supreme Court from the final decision and order entered against her in the above-entitled action on November 24, 2014, the Honorable Steven J. Hippler, District Judge, presiding.
- 2) That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to I.A.R. 11(c)(1-10).
- 3) A preliminary statement of the issues on appeal, which the Appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal is:

- a) Did the district court err by denying the Defendant's Motion to Suppress Evidence?
 - b) Did the district court err at trial by admitting marijuana into evidence when it was not tested?
 - c) Was there sufficient evidence presented at trial to support the jury's finding of guilt?
 - d) Did the district court abuse its discretion by imposing an excessive sentence?
- 4) There is a portion of the record that is sealed. The portion of the record that is sealed is the presentence investigation report (PSI).
- 5) Reporter's Transcript. The Appellant requests the preparation of the entire reporter's standard transcript as defined by I.A.R. 25(d). The Appellant also requests the preparation of the additional portions of the reporter's transcript:
- a) Entry of plea held May 13, 2014 (Court Reporter: Christie Valcich, Estimated pages: 50);
 - b) Hearing on Motion to Suppress held on August 25, 2014 (Court Reporter: Christie Valcich, Estimated pages: 200);
 - c) Jury Trial held September 17-18, 2014 (Court Reporter: Christie Valcich, Estimated pages: 300), this transcript should include:
 - i. The *voir dire* examination of the jury.
 - ii. The opening statements and closing arguments of counsel.
 - iii. The conference on requested instructions, the objections of the parties on the instructions, and the court's ruling thereon.
 - iv. The oral presentation by the court on written instructions given to the jury and reported by the reporter.
 - v. Any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jury panel.
 - d) Sentencing hearing held November 18, 2014 (Court Reporter: Christie Valcich, Estimated pages: 100).

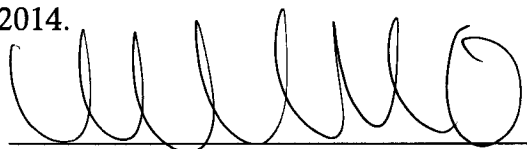
6) Clerk's Record. The Appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The Appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- a) Any and all written requested jury instructions, written jury instructions given by the court, modified or not given jury instructions, depositions, briefs, memoranda, statements or affidavits considered by the court, or considered on any motion made therein, and memorandum opinions or decisions of the court.
- b) Any exhibits, including but not limited to letters or victim impact statements, addenda to the PSI, or other items offered at the sentencing hearing.

7) I certify:

- a) That a copy of this Notice of Appeal has been served on the Court Reporter(s) mentioned in paragraph 5 above;
- b) That the Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is indigent (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e));
- c) That there is no appellate filing fee since this is an appeal in a criminal case (I.C. §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- d) That Ada County will be responsible for paying for the reporter's transcript(s), as the client is indigent (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e)); and
- e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 24 day of November 2014.



NICOLE OWENS
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24 day of November 2014, I mailed (served) a true and correct copy of the within instrument to:

Idaho Attorney General
Criminal Division
Joe R. Williams Bldg., 4th Flr.
Statehouse Mail

Idaho State Appellate Public Defender
3050 North Lake Harbor Lane, Suite 100
Boise, Idaho 83703

Christie Valcich
Court Reporter
Interdepartmental Mail

Joshua Haws
Ada County Prosecutor's Office
Interdepartmental Mail



Katie Van Vorhis

DEC 01 2014

CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant-Appellant

Nicole Owens
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

RECEIVED

NOV 24 2014

Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

LORI ELIZABETH LOVELY,

Defendant-Appellant.

Case No. CR-FE-2014-0004550

ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER
ON DIRECT APPEAL

The Defendant has elected to pursue a direct appeal in the above-entitled matter. The Defendant being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, the Court finds that, under these circumstances, appointment of appellate counsel is justified. The Idaho State Appellate Public Defender shall be appointed to represent the above-named Defendant in all matters pertaining to the direct appeal.

IT IS SO ORDERED

DATED this 26th day of November 2014.


STEVEN J. HIPPLER
District Judge

CERTIFICATE OF MAILING

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have mailed one copy of the Order Appointing State Appellate Public Defender on Direct Appeal as notice pursuant to the Idaho Rules to each of the parties of record in this case in envelopes addressed as follows:

Idaho Attorney General
Criminal Division
Joe R. Williams Bldg., 4th Flr.
Statehouse Mail

Idaho Appellate Public Defender
3050 North Lake Harbor Lane, Suite 100
Boise, Idaho 83703

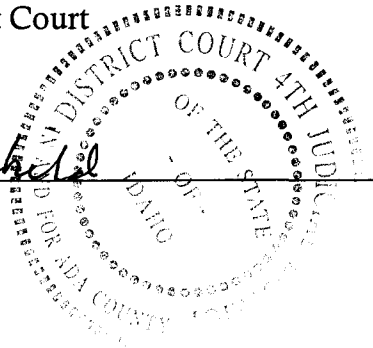
Joshua Haws
Ada County Prosecutor's Office
Interdepartmental Mail

Ada County Public Defender's Office
Attn: Katie Van Vorhis
Interdepartmental Mail

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date: 12/1/14

By E. Chel
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court No. 42790

STATE OF IDAHO,

Plaintiff-Respondent,

v.

LORI ELIZABETH LOVELY,,

Defendant-Appellant.

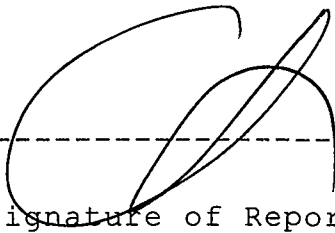
) NO. _____
) A.M. 10:42 FILED
) P.M. _____

APR 06 2015

CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on April 3, 2015, I
lodged a transcript, 509 pages in length, for the
above-referenced appeal with the District Court Clerk of
Ada County in the Fourth Judicial District.



(Signature of Reporter)
Christie Valcich, CSR-RPR
April 3, 2015

Dates: Tuesday, May 13, 2014
Monday, August 25, 2014
Tuesday, August 26, 2014
Wednesday, September 17, 2014
Thursday, September 18, 2014
Tuesday, November 18, 2014

000162

KW

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

LORI ELIZABETH LOVELY,

Defendant-Appellant.

Supreme Court Case No. 42790

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal. It should be noted, however, that the following exhibits from the September 17, 2014 Exhibit List will be retained at the District Court clerk's office and will be made available for viewing upon request.

1. State's Exhibit 15 – Red suitcase
2. State's Exhibit 16 – Black suitcase
3. State's Exhibit 17 – Med. Card, ticket holder, notebook pages, and bus passes
4. State's Exhibit 18 – Lipstick case
5. State's Exhibit 19 – Baggie with crystal substance
6. State's Exhibit 20 – Marijuana
7. State's Exhibit 21 – Marijuana
8. State's Exhibit 22 – Marijuana
9. State's Exhibit 23 – Marijuana
10. State's Exhibit 24 – Marijuana
11. State's Exhibit 25 – Marijuana
12. State's Exhibit 26 – Marijuana
13. State's Exhibit 27 – Marijuana
14. State's Exhibit 28 – Marijuana
15. State's Exhibit 29 – Marijuana
16. State's Exhibit 30 – Marijuana
17. State's Exhibit 31 – Marijuana
18. State's Exhibit 32 – Marijuana
19. State's Exhibit 33 – Marijuana
20. State's Exhibit 34 – Marijuana
21. State's Exhibit 35 – Marijuana
22. State's Exhibit 36 – Marijuana
23. State's Exhibit 37 – Marijuana
24. State's Exhibit 38 – Marijuana
25. State's Exhibit 39 – Marijuana

26. State's Exhibit 40 – Marijuana
27. State's Exhibit 41 – Marijuana
28. State's Exhibit 42 – Marijuana
29. State's Exhibit 43 – Marijuana
30. State's Exhibit 44 – Marijuana
31. State's Exhibit 45 – Marijuana
32. State's Exhibit 46 – Marijuana
33. State's Exhibit 47 – Marijuana
34. State's Exhibit 48 – Marijuana
35. State's Exhibit 49 – Marijuana
36. State's Exhibit 50 – Marijuana
37. State's Exhibit 51 – Marijuana
38. State's Exhibit 52 – Marijuana
39. State's Exhibit 53 – Marijuana
40. State's Exhibit 54 – Marijuana
41. State's Exhibit 55 – Marijuana
42. State's Exhibit 56 – Marijuana
43. State's Exhibit 57 – Marijuana wax
44. State's Exhibit 58 – Marijuana wax
45. State's Exhibit 59 – Marijuana wax
46. State's Exhibit 60 – Marijuana wax

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Presentence Investigation Report.

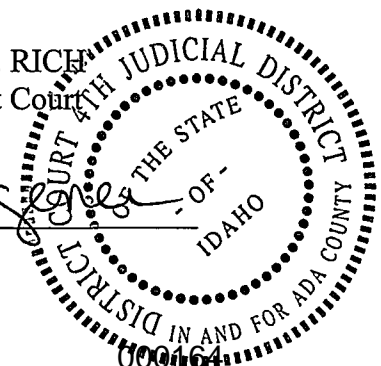
I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Preliminary Hearing held April 16, 2014, Boise, Idaho, filed August 6, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 6th day of April, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. Wesely
Deputy Clerk



**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

HONORABLE STEVEN HIPPLER

August 25, 2014

CLERK: Emily Child

CT REPORTER: Christie Valcich

THE STATE OF IDAHO,

Plaintiff,

vs.

LORI ELIZABETH LOVELY,

Defendant.

Case No. CR-FE-2014-0004550

EXHIBIT LIST

Counsel for State: Joshua P Haws

Counsel for Defendant: Kimberly J Simmons

STATE'S EXHIBITS / EVIDENCE

Admitted

Date Admit

(DR # If evidence, include property number here)

1.	Photo of sign	Admitted	8/25/14
2.	Photo of sign	Admitted	8/25/14
3.	General design of bus	Admitted	8/25/14
4.	Example of size of bus ticket-blank	Admitted	8/25/14
5.	Ticket holder	Admitted	8/25/14

DEFENDANT'S EXHIBITS

Admitted

Date Admit

None			
------	--	--	--

EXHIBIT LIST

000165

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE STEVEN HIPPLER
CLERK: EMILY CHILD
CT REPTR: Christie Valcich

September 17, 2014

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.) Case No. CRFE14-4550
)
LORI LOVELY,)
)
Defendants.)
)

EXHIBIT LIST

Counsel for State: Josh Haws, Michael Guy
Counsel for Defendant: Kimberly Simmons, Simon Billinge

STATE'S EXHIBITS

1. Photo of red suitcase	Admitted	9/17/14
2. Photo of baggage claim ticket	Admitted	9/17/14
3. Photo of black suitcase	Admitted	9/17/14
4. Photo of baggage claim ticket for black case	Admitted	9/17/14
5. Photo of contents of red suitcase	Admitted	9/17/14
6. Photo of contents of red suitcase	Admitted	9/17/14
7. Photo of drug packages	Admitted	9/17/14
8. Photo of drug packages	Admitted	9/17/14
9. Photo of drug packages	Admitted	9/17/14
10. Photo of marijuana wax	Admitted	9/18/14
11. Photo of inside a marijuana package	Admitted	9/18/14
12. Photo of purse and its contents	Admitted	9/18/14
13. Photo of gold lipstick container and baggie	Admitted	9/18/14
14. Photo of lipstick container and baggie	Admitted	9/18/14
15. Red suitcase	Admitted	9/18/14
16. Black suitcase	Admitted	9/18/14
17. Med. Card, ticket holder, notebook pages, and bus passes	Admitted	9/18/14
18. Lipstick case	Admitted	9/18/14
19. Baggie with crystal substance	Admitted	9/18/14

20. Marijuana	Admitted	9/18/14
21. Marijuana	Admitted	9/18/14
22. Marijuana	Admitted	9/18/14
23. Marijuana	Admitted	9/18/14
24. Marijuana	Admitted	9/18/14
25. Marijuana	Admitted	9/18/14
26. Marijuana	Admitted	9/18/14
27. Marijuana	Admitted	9/18/14
28. Marijuana	Admitted	9/18/14
29. Marijuana	Admitted	9/18/14
30. Marijuana	Admitted	9/18/14
31. Marijuana	Admitted	9/18/14
32. Marijuana	Admitted	9/18/14
33. Marijuana	Admitted	9/18/14
34. Marijuana	Admitted	9/18/14
35. Marijuana	Admitted	9/18/14
36. Marijuana	Admitted	9/18/14
37. Marijuana	Admitted	9/18/14
38. Marijuana	Admitted	9/18/14
39. Marijuana	Admitted	9/18/14
40. Marijuana	Admitted	9/18/14
41. Marijuana	Admitted	9/18/14
42. Marijuana	Admitted	9/18/14
43. Marijuana	Admitted	9/18/14
44. Marijuana	Admitted	9/18/14
45. Marijuana	Admitted	9/18/14
46. Marijuana	Admitted	9/18/14
47. Marijuana	Admitted	9/18/14
48. Marijuana	Admitted	9/18/14
49. Marijuana	Admitted	9/18/14
50. Marijuana	Admitted	9/18/14
51. Marijuana	Admitted	9/18/14
52. Marijuana	Admitted	9/18/14
53. Marijuana	Admitted	9/18/14
54. Marijuana	Admitted	9/18/14
55. Marijuana	Admitted	9/18/14
56. Marijuana	Admitted	9/18/14
57. Marijuana wax	Admitted	9/18/14
58. Marijuana wax	Admitted	9/18/14
59. Marijuana wax	Admitted	9/18/14
60. Marijuana wax	Admitted	9/18/14

DEFENDANT'S EXHIBITS

None

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,
vs.
LORI ELIZABETH LOVELY,

Defendant-Appellant.

Supreme Court Case No. 42790

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

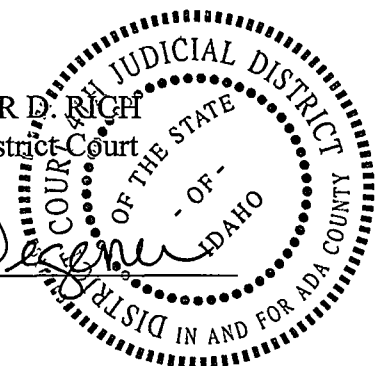
ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: APR 06 2015

CHRISTOPHER D. RICH
Clerk of the District Court

By KWegener
Deputy Clerk



CERTIFICATE OF SERVICE

000168

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

LORI ELIZABETH LOVELY,

Defendant-Appellant.

Supreme Court Case No. 42790

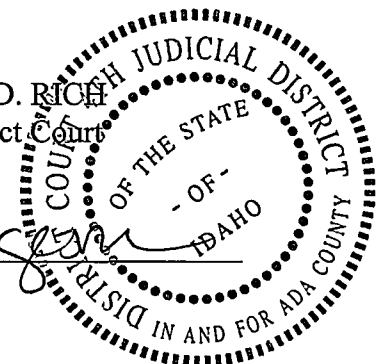
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 24th day of November, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. [Signature]
Deputy Clerk



CERTIFICATE TO RECORD

000169